SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 408.

THE UNITED STATES, PETITIONER,

vs.

LEOPOLD BARUCH.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

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a United States Circuit Court of Appeals for the Second Circuit,

LEOPOLD BARUCH, appellant,
v.
THE UNITED STATES, appellee. } 4419.

Transcript of record.

Appeal from the Circuit Court of the United States for the Southern District of New York.

1 *Order.* [1]

At a stated term of the United States Circuit Court for the Southern District of New York, held in the United States court and post office building in the city of New York, on the 15th day of August, 1906.

Present: Hon. E. Henry Lacombe, United States circuit judge. [2]

LEOPOLD BARUCH
v.
THE UNITED STATES. } 4419.

Upon reading and filing the annexed petition, and upon motion of Comstock & Washburn, attorneys for the petitioner, it is

Ordered, That the Board of United States General Appraisers sitting at the port of New York return to this court the record and the evidence [3] taken by them in each of the matters set forth and referred to in the annexed Schedule A, which is hereby made a part hereof, together with a certified statement of the facts involved and their decisions thereon.

Dated New York, August 15, 1906.

E. H. LACOMBE,
United States Circuit Judge.

2 *Petition.* [4]

United States Circuit Court, Southern District of New York.

LEOPOLD BARUCH
v.
THE UNITED STATES. } 4419.

To the Honorable, the United States Circuit Court for the Southern District of New York: [5]

Your petitioner, having complied with the statutes in such case made and provided, and being dissatisfied with the decisions of the Board of United States General Appraisers made within thirty days immediately preceding the date hereof in each of the matters set

forth and referred to in the annexed Schedule A, which is hereby made a part hereof, as to the construction of the law and the facts respecting the classification of such merchandise and the rate of duty imposed thereon under such classification, respectfully pray that the said Circuit Court review the questions of law and fact involved in said decisions, and for that [6] purpose pray that an order be entered requiring the said Board of Appraisers to return said Circuit Court the record and evidence taken by them, together with a certified statement of the facts involved in each of the said matters and their decisions thereon. And your petition also prays for such other or further orders or relief in the premises as the statutes provide or to the court shall seem just.

3 The particulars of the errors of law and fact [7] involved in said decisions of said Board of Appraisers of which your petitioner complains are set forth in the annexed Schedule B, which is hereby referred to and made a part hereof.

Dated, New York, August 15, 1906.

LEOPOLD BARUCH,
Petitioner,
By COMSTOCK & WASHBURN,
Attorneys,
56 Pine St., New York City.

SCHEDULE A. [8]

The following are the importations and entries covered by the proceeding, with the dates thereof, and with such other data as are convenient for purposes of identification:

Leopold Baruch decided on July 25th, 1906.

Protest.	Entry and year.
52835–F/9290	37651/1899
53452–F/10287	46586
53585–F/8708	32561
53765–F/10788	54530
55458–F/12284	70588
57036–F/14236	94537 [9]
57242–F/13968	87257
58045–F/15867	110145
58550–F/16336	115222
60078–F/17420	126106
61326–F/18448	130451
61327–F/18490	133566
62516–F/19942	149919
63370–F/538	154242
63585–F/826	158388
4 65632–F/2915	188682 [10]
66538–F/3786	198008

Protest.	Entry and year.
67127–F/4425	207589
67923–F/5330	3658
68780–F/6232	15595
69434–F/6649	19362/1900
69551–F/7146	23196
70722–F/7964	31957
71590–F/8566	36424
71591–F/8887	39964
73472–F/12294	70360
74206–F/12517	77706/1900
75801–F/13942	90942
76551–F/14650	98045 [11]
76736–F/15269	106292
76737–F/15051	106910/99
78082–F/16447	113873/00
79878–F/18419	141888
81451–F/1617	163116
84532–F/5475	212439
85319–F/6116	2996/1901
87166–F/8076	23552
87434–F/8599	29291
88068–F/9155	36902
88254–F/9612	45916
89364–F/10360	53379
91196–F/12693	85007 [12]
91886–F/13290	99576
92079–F/13657	104271
92610–F/14280	116684
93660–F/15387	129442
94450–F/16161	142161
95822–F/813	158666
96280–F/1379	163845
99067–F/3979	211115
99481–F/4938	227426
99711–F/3425	202363
431–H/5909	
5 63735–F/1277	167326 [13]
64706–F/2321	180793
1757–H/7320	29442
2252–H/7498	21790
2353–H/7992	38556
2769–H/8487	42258
2770–H/8777	47565/1902
3546–H/9460	56807
4197–H/10499	71490
4726–H/9893	62489
5419–H/11290	81338
5934–H/11794	89753

	Protest.	Entry and year.
	6309–H/12384	99447
	7095–H/12900	10954
	7300–H/13549	118434 [14]
	9092–H/15176	139592
	10235–H/16474	149491
	11019–H/17456	167981
	11554–H/18171	173786
	12973–H/1551	193797
	13868–H/2187	204410
	14316–H/3055	211414
	14953–H/4232	227102
	16900–H/6454	249441
	17321–H/6660	254415/1903
	17322–H/6831	254416
	18170–H/7318	5232
	19451–H/10341	33527 [15]
	21430–H/11006	39099
	21431–H/12204	48449
	22278–H/12711	54130
	23588–H/13862	68230
	23973–H/14643	71915
	23974–H/15224	79814
	24116–H/14652	75069
	109441/111	200022
	110810/1557	211515
	110811/2265	217168
6	117722/6328	261275/1903 [16]
	119376/8218	11614/1904
	119377/8969	15791
	121319/9679	27845
	121320/10810	35020
	127040/13983	67978
	128160/15204	77943
	129073/16163	88592
	131775/17070	100014
	132659/19617	129631
	135049/21582	143985
	137732/23479	158272
	138380/24078	163434
	142346/25328	172963 [17]
	142347/25756	178897
	144888/26255	182912
	144889/27063	119067
	146722/28474	203815
	147027/29674	220914
	152365/541	237419
	153673/1966	155218
	153867/3180	267335

Protest.	Entry and year.
154941/3543	271316
155898/4507	5941/1905
157586/5771	14330
160369/6957	24903
160370/7507	30559
162192/8311	36903 [18]
163555/9933	52905
164908/9339	46619
164909/10625	58320
168017/11298	64152
168401/11584	68510/1905
174547/14044	97638
174548/15682	112958
174549/18257	134550
177603/19917	144923
179315/21599	154563
7 179316/22126	158937 [19]
182263/23596	169853
182954/24556	180633
184845/26053	191230
185211/26668	197979
189679/929	215151
191788/2811	233947
191789/3370	234026
194262/5590	253538
199065/10163	291178
201077/12898	285918

SCHEDULE B. [20]

The Board of United States General Appraisers has confirmed the action of the collector of the port in assessing and exacting duty at 60 per cent ad valorem on certain bindings or tapes, thereby making errors of law and fact:

1. In not finding that said merchandise was not braids.
2. In not finding that such merchandise was bindings.
3. In not finding that, if not as aforesaid, said merchandise was tapes. [21]
4. In not finding that, if not as last aforesaid, said merchandise was bandings, ribbons, tubing, webs or webbing.
5. In not finding that said merchandise was made of cotton or other vegetable fiber.
6. In not deciding that the merchandise was not covered by nor dutiable under paragraph 339 of the tariff act of July 24, 1897.
8 7. In not deciding that the merchandise was [22] properly dutiable at only 45 per cent ad valorem under paragraph 320 of the act aforesaid.
8. In not deciding that said paragraph 320 was the most specific one for said merchandise.

9. In overruling the protests and in affirming the decision of the collector.

10. In not sustaining the protests and in not reversing the decision of the collector.

BOND. [23]

Know all men by these presents, that I, Philip Comstock, am held and firmly bound unto the United States of America, in the sum of one hundred dollars, to be paid to the United States of America; for the payment of which, well and truly to be made, I bind myself, my heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with my seal and dated the 15th day of August, in the year of our Lord one thousand nine hundred and six.

Whereas Leopold Baruch has applied to the [24] United States Circuit Court of Appeals for the Second Circuit, for a review of the decision of the United States Circuit Court for the Southern District of New York as to the questions of law and fact involved in certain decisions of the Board of United States General Appraisers.

Now, therefore, the condition of this obligation is such that if the above-named Leopold Baruch shall prosecute said proceedings with effect and pay all damages and costs which shall be
9 awarded against him therein, if he shall fail to make said [25] proceeding good, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

PHILIP COMSTOCK. [SEAL.]

Sealed and delivered and taken and acknowledged this 15th day of August, 1906, before me.

HENRY J. RODE,
Notary Public, Kings County.

Certificate filed in N. Y. County.

UNITED STATES OF AMERICA, *Southern District of New York, ss:* [26]

Philip Comstock, being duly sworn, deposes and says that he does business in the Southern District of New York, in the city of New York, and that he is worth the sum of two hundred dollars over and above all his just debts and liabilities.

PHILIP COMSTOCK.

Sworn to this 15th day of August, 1906, before me.

HENRY J. RODE, [27]
Notary Public, Kings County.

Certificate filed in N. Y. County.

This bond approved as to form and amount and sufficiency of surety.

Dated New York, August 15, '06.

E. H. LACOMBE,
U. S. Circuit Judge.

10 RETURN. [28]

United States Circuit Court, Southern District of New York.

LEOPOLD BARUCH
vs.
THE UNITED STATES. } Suit 4419.

On application for review of a decision of the Board of United States General Appraisers.

NEW YORK, *April 1, 1907.* [29]

In response to the order of the court, said board hereby returns, as given below, the record in the above-entitled matter, and certifies that a complete statement of the facts involved in the case, together with the decision of the board, is embraced therein, and that no other facts were ascertained by said board than such as are thus shown.

Specifically, the return comprises:

(1) One of the importer's protests, No. 52835–F.

(2) The report of the collector of customs thereon. [30]

For the evidence considered by the board and for a copy of the board's decision, the court is referred to the return previously made in Strauss Brothers & Company *v.* United States, No. 4439.

I. F. FISCHER,
W. B. HOWELL,
Board of United States General Appraisers.

11 PROTEST NO. 52835–F. [31]

NEW YORK, *Jun. 16, 1899.*

Hon. Collector of Customs, Port of New York:

SIR: Notice of dissatisfaction is hereby given with, and protest is hereby made against, your ascertainment and liquidation of duties and your decision assessing duty at 60 per cent ad valorem on braids (so called), bindings, bobbins, etc. (including featherstitch, rickrack, novelty, renaissance, honiton, hat and other so-called braids and all goods assessed for duty as braids or trimmings under par. 339, tariff act of July 24, 1897), [32] covered by entries below named. The reasons for objection under said act are as follows: Said merchandise is not trimmings. It is not covered by par. 339, or, if so, it is otherwise more aptly and specifically provided for. It is covered by, and is dutiable under, par. 322 at only 45 per cent ad valorem. If not so dutiable, it is covered by, and is dutiable under, sec. 6 (because its entire or chief component is on the free list, or because for other reasons said merchandise is not elsewhere provided for in said act) at only 20 per cent ad valorem, or par. 449 (as manufactures of chip, grass, india-rubber, palm leaf, straw, weeds or other substance therein named, of which these [33] substances or either of them is the component of chief value) at only 30 per cent ad valorem, or par. 208 (as manufactures) at only 35 per cent ad valorem, or the last part

of par. 346 at only 35 per cent ad valorem, or par. 450 (as manufactures of fur, gelatine or other substance therein named, or of which these substances or either of them is the component of chief value) at only 35 per cent ad valorem, or par. 206 (as manufactures)
12 at only 40 per cent ad valorem, or par. 193 at only 45 per cent ad valorem, or par. 320 [34] (as bindings, tapes, or other articles therein named) at only 45 per cent ad valorem, or par. 347 at only 45 per cent ad valorem, or par. 316 (as articles manufactured) at only 50 per cent ad valorem, or par. 389 (as one or more of the articles therein named) at only 50 per cent ad valorem, or par. 391 (as manufactures) at only 50 per cent ad valorem, or the proviso of par. 346 at only 50 per cent ad valorem, or the first part of par. 346 at the rate or rates as therein provided according to count, etc., when such rate or rates amount to less than 60 per cent ad valorem.

The parts of the law referred to in above claims [35] are the only, or the most apt and specific, ones for said merchandise or articles and should control the classification. The above claims severally and collectively are alternatively made under the paragraphs or sections referred to, both directly, and by similitude and component material or otherwise as provided in sec. 7, and by the rules as to the ordinary meaning of words, the statutory meaning, commercial designation, meaning or usage, controlling force of chief use and chief component in value, and by all statutory, judicial or other rules for the construction of the law; hereby reserving all questions of law and fact, and giving notice that this protest is intended to apply [36] to each and all future importations of the same or similar merchandise or articles, and the payments thereon, and to all merchandise or articles included in the entries covered thereby.

The offer is hereby made to furnish evidence to the Board of United States General Appraisers, on reasonable notice from them, of the facts involved, and in support of the contentions herein.

The excess is paid under compulsion, to obtain and retain
13 possession of said merchandise or articles, and you and the Government are held liable [37] for the same, and a demand for the repayment thereof and a readjustment or liquidation of the entries in accordance with the above claims is hereby made. The marks and numbers below given are given under duress and without prejudice.

Entry No.—37651.
Vessel—" Westernland."
Entered—Mch. 9, '99.
Bond No.—C.
Liquidated—June 7, '99.
Marks and Nos.—L B 783/4 52835F.

Respectfully,

LEOPOLD BARUCH. [28]
By COMSTOCK & BROWN, *Attorneys,*
Attorneys and Counsellors at Law,
56 Pine Street, New York City.

REPORT OF COLLECTOR.

UNITED STATES CUSTOMS SERVICE,
PORT OF NEW YORK,
Collector's Office, July 14, 1899.

BOARD OF U. S. GEN'L APPRAISERS, [39]
At the Port of New York.

GENTLEMEN: I submit the protest of Leopold Baruch No. 9290 52835F against the assessment of duty by this office at the rate of 60 per cent ad valorem on certain so-called "Braids," etc., imported by him in the "Westernland" Mch. 9, '99. An inspection of the invoice shows that the goods in question are invoiced as "cotton featherstitch braids" which were returned by the appraiser
14 as "cotton braid 60 per cent." Duty was assessed thereon at the rate above stated under [40] the provisions of par. 339, act of July 24, '97.

Note G. A. 4082 and 4326.

I have to report that the claimant has complied with the requirements of section 14 of the act of June 10, 1890, so far as lodging protest within the statutory time. The naval officer concurs in the decision of this office.

The entry and invoice covered by the above protest are inclosed herewith.

Respectfully yours,
J. J. COUCH,
Special Deputy Collector.

(3 inclosures.) [41]

DECISION OF THE BOARD.

UNITED STATES GENERAL APPRAISERS,
New York, July 24, 1906.

In the matter of protests 91963–F, etc., of Strauss Brothers & Co. against the assessment of duty by the collector of customs at the port of New York.

Befcre Board No. 2.

HOWELL, General Appraiser. [42]

In these cases the importers or their counsel have expressly limited the protests to the goods described in the invoices as "featherstitch braids," or as returned by the appraiser.

In Vom Baur's case (G. A. 5744—T. D. 25480) the board found that featherstitch braids were commercially known as "braids" at and prior to the passage of the tariff act of July 24, 1897,
15 and accordingly held that they were properly dutiable [43] under the provision for braids in paragraph 339 of said act.

On appeal being taken from this decision to the Circuit Court for the Southern District of New York, that court affirmed the decision of the board on the "opinion of the board." Vom Baur v. United States (141 Fed. Rep., 459; T. D. 26456).

Appeal was taken from this decision of the Circuit Court to the Circuit Court of Appeals for the Second Circuit, but was subsequently dismissed without prejudice. (Suit 3640, T. D. 27397.)

In the Vom Baur case (supra) the board had the benefit of the testimony of importers, domestic manufacturers and dealers in braids in the [44] markets of this country, and that testimony is now made a part of the record in these cases. No additional evidence has been offered.

In deciding the Vom Baur case the board briefly reviewed the testimony, and called particular attention to the fact that the witnesses testified that there had been no change in the commercial designation of these articles since 1892, when it was shown by the testimony of numerous importers that the goods were commercially known as "featherstitch braids," and the United States Circuit Court found them to be so commercially known in the case In re Dickerhoff (64 Fed. Rep., 161). [45]

In view of the importance of the issue, and the probability of the question of the proper classification of these goods being again taken to the courts for review, we deem it advisable to quote our decision in the Vom Baur case in extenso. We said:

"The goods covered by the protests are described in the in-
16 voices as 'featherstitch braid.' They consist of articles ranging variously from [46] about one-fourth to one-half of an inch in width, loom woven, of white or colored threads throughout, or of mixed white and variously colored threads of cotton or other vegetable fiber, and ornamented with raised figures in various designs, 'herringbone' and others, some of which have plain and others scalloped or looped edges. They were returned by the appraiser as 'cotton braids,' and were assessed with duty by the collector at the rate of 60 per cent ad valorem under paragraph 339 of the act of July 24, 1897, the pertinent provision of which is as follows:

"'Embroideries and all trimmings, including braids, edgings, insertings, flouncings, galloons, gorings, and bands * * * composed wholly or in [47] chief value of flax, cotton, or other vegetable fiber, and not elsewhere specially provided for in this act.'

"Various claims are made in the protests, but the one relied upon by counsel for the importer is that the articles are dutiable at the rate of 45 per cent ad valorem under paragraph 320 of said act as 'bindings' or as 'tapes * * * made of cotton or other vegetable fiber.'

"In G. A. 4326 (T. D. 20515) and G. A. 4929 (T. D. 25073) the board held that featherstitch braids were dutiable under paragraph 339, as assessed in this case. On appeal from the latter decision, the Circuit Court for the Southern District of New York, in Steinhardt v. United States (121 Fed. Rep., 442) reversed the decision of the board, the [48] opinion of the court (Wheeler, J.) being in part as follows:

"'The articles in question appear to be narrow, woven tapes of cotton, used largely for covering the seams of underwear and waists. The Standard Dictionary gives one definition of a "braid" as "a

narrow, flat tape or woven strip for binding the edges of fabrics, or for ornamenting them." If these articles are braids within this or a like definition, they are also bindings or tapes within paragraph 320, and, being provided for there, are otherwise provided for than in 339.'

17 "The Government did not appeal from that [49] decision, but limited its acquiescence in the ruling to that particular case (T. D. 24269), and has brought forward this case for the purpose of showing that the articles are commercially known as braids, and were so commercially known at and prior to the passage of the tariff act of July 24, 1897, and therefore dutiable under paragraph 359.

"Counsel for the importer contends in his brief that there is no definite, general, and uniform trade designation of these articles by the name of 'braids;' that the name 'binding' and 'tapes' is employed to designate these goods just as is the name 'featherstitch braids;' that they are in fact tapes, having been produced by weaving instead of being braided, and that they are not within the language of paragraph 339, or if primarily within [50] its scope, they are prevented from remaining there because they are 'elsewhere specially provided for' in the act.

"We think that in determining the proper classification of these goods the fact that they are produced by weaving instead of being braided is quite immaterial, for the commercial designation must control as against the method of fabrication. It has been repeatedly so decided by the courts. In the case of In re Dieckerhoff (54 Fed. Rep., 161), involving featherstitch braids similar to these here in question, the Government took the position that braids must be braided; but this contention was overruled by the court, and the commercial designation accepted.

"In the case of United States v. Wright & Young [51] (reported in T. D. 13707) the Circuit Court decided that goods commercially known as 'tapes' were not dutiable as 'braids,' although made by being braided.

"So in the case of Field v. United States (50 Fed. Rep., 908), affirmed in United States v. Field (54 id., 367), it was held that the method of manufacture was ineffective as against a commercial designation. The goods in that case were made on a lace machine, and had the substantial characteristics of laces, but not being known commercially as laces were held not to be dutiable as such.

18 "So, too, in the case of Wolff v. United States [52] (116 Fed. Rep., 1023), it was recently decided that articles commercially known as tapes were dutiable as such, without any reference to the method of fabrication, this evidently being regarded by the court as immaterial. Two questions then remain for determination:

"First. Were these goods known in the trade and commerce of this country at and immediately prior to July 24, 1897, as 'braids'?

"Second. If the goods were commercially known as 'braids' at and immediately prior to July 24, 1897, are they dutiable under paragraph 339?

"Fourteen witnesses, including the importer, were examined in this case, and the testimony taken in [53] the Steinhardt case (supra)—where seven witnesses testified, four of them being the same witnesses who appeared before the board in the case at bar—was made a part of this record.

"All of the witnesses testified that one of the terms under which these goods were known is 'featherstitch braids,' but some of them testified that they were also known under various other names, such as 'finishing tape,' 'herringbone webbing,' 'seam binding,' 'cotton binding,' 'binding tape,' 'herringbone binding,' 'finishing braid,' 'finishing binding,' 'webbing,' 'web,' 'seam coverings,' 'seam tape,' 'herringbone,' 'featherstitch binding.'

"The goods are labeled 'featherstitch braids,' as shown by the several exhibits introduced in [54] evidence. Seven of the witnesses produced samples of importations made by the firms with which they were connected, and, with one exception, they were labeled 'featherstitch braids.' We think the testimony of the witnesses, when carefully examined, shows that the articles are commercially known as 'featherstitch braids,' and that they have been so known since 1890.

"Mr. Vom Baur, the importer in this case, testified in part as follows:

19 "'Q. During all the time you have known of [55] these goods, please state by which name or names they have been designated in trade in this country.—A. In this country they have been named as featherstitch braids, as finishing tape, herringbone webbing, as seam binding—that is about all.

"'Q. And do you say that any one of those names would, at all the times during which you have dealt in these goods, have designated them commercially?—A. Yes, sir.

"'Q. How can the general appraisers, in passing upon these protests, identify the goods of this character on your invoices?—A. As featherstitch braids.

"'Q. That is the usual way in which they are invoiced?—A. The usual way.

"'Q. You mean invoiced from abroad?—A. Yes, sir. [56]

"'Q. And is it the usual way in which you bill goods in this country when you sell them here?—A. Usually.

"'Q. As far as you know, it is the usual way in which they are sold and bought in the retail trade?—A. Well, they are bought under different inquiries, as I stated.

"'Q. But I am talking about the usual word; the one that is most commonly employed?—A. Yes, sir.

"'Q. In other words, the term featherstitch braids expresses a little more nearer and exactly than any other of the terms you have given us this particular class of goods, does it not?—A. Yes, sir.' [57]

"Mr. Vom Baur was a witness in the Steinhardt case (supra), and a portion of his testimony in that case is as follows:

"'Q. How do you buy and sell, generally, in your wholesale trade, under what name?—A. Featherstitch braid.

"'Q. That is the general name?—A. Yes.'

"Mr. Frank B. Stockton, a buyer for the firm of George Brogfeldt & Co., importers, testified in part as follows:

20 "'Q. Featherstitch braids is one of the names [58] under which they are known commercially?—A. That's about the idea.

"'Q. Whether or not, it is true, when you sell these goods, they are known generally as featherstitch braids?—A. They are known as such, but we bill them as bindings.

"'Q. Do you ever bill them as featherstitch braids?—A. Well, occasionally. However, the label may read ——

"'Q. Whether or not, it is not true that, generally speaking, you bill them as featherstitch braids?—A. Rather.

"'Q. How long have you been handling with one firm or another this particular line of goods?—A. For probably eight or ten years.

"'Q. During that time has their commercial [59] name been the same?—A. Yes, sir.

"'Q. Referring to the label on the goods which you hold in your hand there, is it true that that label stays with the goods until they get into the hands of the retail dealer?—A. Yes, sir.'

"Daniel Weiller, of the firm of Weiller & Sons, importers, who was also a witness in the Steinhardt case, was asked:

"'Q. Is there an article commercially known as featherstitch braids?—A. Yes, sir.

"'Q. You handle such an article?—A. Yes, sir.

"'Q. Have been during the time you have been in business?—A. Yes, sir.

"'Q. Are the goods you import of this character [60] usually invoiced in this manner?—A. Yes, sir.

"'Q. That is, as featherstitch braids?—A. Yes, sir.

"'Q. That is the name they are usually sold by?—A. Well, one of the names.

"'Q. That is the name they are usually sold by, I mean?—A. They are sometimes sold by that name.

"'Q. Do you say that is not the name they are usually sold by, then?—A. Well, yes; it is the name.

21 "'Q. Do you know of a name which expresses [61] this class of articles than the term featherstitch braids?—A. No, sir.

"'Q. You have been dealing in these, you say, for twenty years?—A. Yes, sir.

"'Q. During that time has the commercial name changed, or has it been the same, do you say?—A. The same.'

"Mr. Adolph Keller, customhouse clerk for the firm of Dieckerhoff, Raffloor & Co., testified that he was familiar with this class of goods, and he was asked:

"'Q. Do you know of any other term which describes this class of goods any more exactly than featherstitch braids?—A. I think the term seam binding is used just as frequently for this class of [62] goods as the term featherstitch braids.

"'Q. I don't think you quite understood the question; do you know of any other term which describes this class of goods any more exactly than featherstitch braids?—A. Seam binding.

"'Q. You think that describes it more exactly?—A. More explicit, I would call it web-finishing tape.

"'Q. Is that term usually employed?—A. No, it is not usually employed.

"'Q. Is there any term more usually employed than the term featherstitch braid that you know of?—A. No. That is, featherstitch braid is really a foreign name. When these goods were first made and brought to this country, they were known as finishing tape; featherstitch braid was [63] given by the foreign manufacturers afterwards.'

"Mr. Ainsworth J. Hague, of A. J. Hague & Co., importers, testified that the goods were known as 'featherstitch braids,' as 'webbing,' as 'web,' and as 'bindings.'

"Mr. Morris Steinhardt, buyer for A. Steinhardt & Bro., testified in both cases. His testimony in the case in court was in part as follows:

22 "'Q. Under what trade name has this been [64] bought and sold since you have been familiar with them?—A. They are both bought as seam bindings, and they are bought as featherstitched braids and herringbone; those are about the principal names.

"'Q. Buy and sell them under those names?—A. Bought and sold under those names.'

"And in this case he was asked:

"'Q. Please state each and every name which, in the usage of the trade in this country prior to 1897, was employed to designate these goods.—A. Seam binding, seam coverings, seam tape, herringbone, and featherstitch braid.'

"The testimony of Philip K. Krackehl, assistant [65] buyer and manager of the notion department of Mills & Gibb, who also testified in the Steinhardt case, is in part as follows:

"'Q. Do you know of any term which describes these goods more specifically than the term featherstitch braids?—A. No, sir; I do not.

"'Q. Now, has the commercial designation or designations of this article (Exhibit G) changed during the time you have been familiar with it?—A. No, sir; not that I know of.'

"Mr. Joseph A. Flaherty, of Joseph A. Flaherty & Sons, manufacturers of wearing apparel, testified that he had been buying and using these goods for twelve years, and in his dealings with [66] both importers and manufacturers no other name than 'featherstitch

braid' had been employed. He has never even heard them called 'finishing tapes' nor 'seam binding,' but has heard them called 'herringbone braid.'

"Mr. Martin Roman, buyer for the Siegel-Cooper Company, testified in part as follows:

"'Q. In your dealings with wholesale houses, importers, or jobbers—people from whom you buy—what did you call these
23 articles at and prior to July 24, 1897?—A. We called them herringbone [67] at that time.

"'Q. Then that seemed to be the earlier name?—A. Than featherstitch braids.

"'Q. Anything else that you remember?—A. They were called seam bindings, seam coverings, finishing braids.

"'Q. What was the most usual term you used in orders in buying these?—A. Featherstitch braids.

"'Q. Was the term herringbone trimming a term in general use at that time?—A. I don't think we ordered them as such.

"'Q. Was the term seam binding a general term as applied to these articles?—A. I do not think, in ordering them.

"'Q. You seem to imply that it was a term used in some other way; in what way would the term [68] seam binding be used, or by whom?—A. Well, it is used largely by our consumers. Dealing with a consumer, we often get generally their usage.

"'Please state again what was the term used in your dealings with the wholesale trade or jobbing trade, or importers, carefully excluding retail customers?—A. Featherstitch braids.

"'Q. Any other term—now still with the wholesale people only?—A. I think that was the most general; I think that was general.'

"Mr. John Edwards, a buyer for the Simpson, Crawford Company, testified that he had been handling these goods for seventeen years, and that the only names he had ever heard applied to them were 'featherstitch braid' and 'herringbone trimming.' [69]

"Mr. Frederick Mossbach, connected with the firm of Bloomingdale Brothers, testified in part as follows:

"'Q. How long have you been dealing in articles like these samples?—A. About eighteen years.

"'Q. Have you bought them in New York?—A. We bought some, and we imported some ourselves, but not recently—we haven't imported any.

24 "'Q. You bought them from importers and [70] wholesale dealers, have you?—A. Yes; in the last ten or twelve years.

"'Q. Did you buy any from importers and wholesale dealers prior to July 24, 1897?—A. Yes, sir.

"'Q. At that date, and before that, and in dealings with wholesale dealers only, what was the name or names generally applied to articles like that?—A. Featherstitch braid and herringbone braid.

"'Q. Is that all?—A. That is all that I remember.

"'Q. Will you give us the names of some of the people you bought those from prior to 1897?—A. A. C. M. Vom Baur; B. Ullman & Co.;

Dieckerhoff, Rafloor & Co.; Edelhoff & Rinke; A. J. Hague & Co., and Dreyfuss, Weyler & Co., and there may be [71] one or two others that I can't recall.

"'Q. In your dealings with those people—in orders sent to them, correspondence with them, if you had any—what was the name that was used as applied to these goods?—A. Featherstitch braid.

"'Q. Can you state positively that in orders that you sent to the houses you have named, you called for featherstitch braid?—A. I can't.

"'Q. Did you ever use any other term in orders?—A. May have called them herringbone braid, but not recently.

"'Q. Did you ever use any other name than those two in orders?—A. No, sir.'

"Mr. Charles S. King, general manager of the Sanford Narrow Fabric Company, of Pawtucket, [72] R. I., manufacturers of featherstitch braids, testified that in his experience no other name than 'featherstitch braid' had been applied to these goods.

"The testimony of Mr. Percy Gardner, salesman for this company, is to the same effect; and it is further shown by the testimony of Mr. King and Mr. Gardner that they have sold these goods to Weiller & Son, Mills & Gibb, A. J. Hague & Co., Steinhardt & Bro., Dieckerhoff, Raffloor & Co., and others. Their testimony is substantiated by letters admitted in evidence, which were written in the usual course of business, wherein the goods are designated as 'featherstitch braids.' [73]

"It is also shown by the testimony that prior to 1897 several of the importing firms, whose representatives have testified in this case, when ordering goods like these in question of the Sanford Narrow Fabric Company, directed that they should be labeled 'featherstitch braids.'

"It is further shown that the goods are designated as 'featherstitch braids' in advertisements in trade papers.

"We have briefly reviewed the testimony of all the witnesses examined by the board, except that of Mr. George J. Heaphy, buyer of notions for the firm of Lord & Taylor, whose testimony is of little value because of his limited experience in dealing in these articles prior to July 24, 1897. [74]

"Three witnesses testified in the Steinhardt case who were not called in this case. They were Mr. Frank Ganong, lace buyer for A. J. Hague & Co., who testified that the goods were known under the names 'binding' and 'seam bindings;' Mr. John H. Connell, of H. B. Claflin & Co., who testified that the goods were generally designated as 'featherstitch braid' or 'seam bindings,' and Mr. Henry Kleinschmidt, salesman for Mr. C. M. Vom Baur, who stated that the goods were known as 'seam bindings,' as 'featherstitch braids,' as 'herringbone' and as 'webbing.'

"This examination of the testimony discloses the absence of the use of any general name for these goods in the trade except 'featherstitch braids.' All the witnesses are agreed, however, that the [75]

goods are known as 'featherstitch braids,' and we think the other names are subordinate to this general trade name, and should not be given an 'undue importance' for the purpose of changing the tariff classification of the goods. In re H. B. Claflin & Co. (52 Fed. Rep., 121).

"It is important to note that the witnesses testify that there has been no change in the commercial designation of these articles for the past ten to fifteen years, for in 1892 it was proved by the
26 testimony of numerous importers that these goods were commercially known as 'featherstitch [76] braids,' and the United States Circuit Court found them to be commercially known in the case In re Dieckerhoff (supra). In the statement of the case as reported, we find the following:

'"The importers * * * produced the testimony of a number of trade witnesses before the said board, from whose evidence it appeared that the merchandise was known in trade and commerce at and immediately prior to October 1, 1890, as "featherstitch braids," and that the articles were not known as "trimmings" or included within the line of goods of that character. It also appeared that the braids were sometimes made on looms and sometimes on braiding machines, but that by far the greater proportion was made on looms."

"On this record we find, as matter of fact— [77]

"1. That the goods in question were generally known in the wholesale trade of the United States at and prior to July 24, 1897, as 'featherstitch braids.'

"2. That the term 'featherstitch braids' was the only general commercial name under which the goods were known in the trade and commerce of this country at and immediately prior to July 24, 1897, and that the terms 'seam bindings' 'finishing tapes,' and others are subordinate names which have not been generally employed to designate these goods.

"In view of these findings, we think the case is distinguished from the Steinhardt case (supra). [78] That case only decided that if the articles were braids within the lexicographical definitions they were also bindings or tapes, and were therefore, more specifically provided for in paragraph 320. There was no satisfactory testimony in the case as to the commercial designation of the articles, whereas it has now been shown by competent testimony that they are generally known in the commerce of this country as 'braids,' and not as 'tapes' or 'bindings.'

"The Circuit Court of Appeals in Hiller v. United States (106 Fed. Rep. 73) decided that cotton braids of all classes are
27 included within the scope of paragraph 339. The decision of the court is in part as follows: [79]

"'A comparison of the provisions of the cotton schedules in the acts of 1894 and 1897 in regard to the classification of braids is, however, quite significant of the intent of Congress. Paragraph 263 of the act of 1894, which correspond to paragraph 320 of the act of 1897, imposed a duty of 45 per cent. upon cords, braids, etc., made of cotton, but braids are omitted in paragraph 320 of the new act,

which imposes the same duty. Paragraph 276 of the act of 1894, which corresponded to paragraph 329 of the new act, omitted braids, which was inserted in paragraph 339—the one under consideration. A comparison of the two acts indicates that Congress intentionally took braids out of the 45 per cent. paragraph, where it [80] had been in 1894, and put the article into a paragraph imposing the higher rate of duty, and that it intended to impose the rate upon the articles, irrespective of the use to which they might be applied.'

"Under this decision, featherstitch braids, which were held in the Dieckerhoff case to be dutiable as 'braids' under the act of 1890, and which we have found were commercially known as 'braids' at the time of the passage of the act of July 24, 1897, are, in our opinion, dutiable as assessed under the provisions of paragraph 339 of the act of July 24, 1897."

Following this decision the protests are overruled, and the decision of the collector in each case is affirmed. [81]

(Signed) I. F. FISCHER,
W. B. HOWELL,
MARION DE VRIES,
Board of U. S. General Appraisers.

28 TESTIMONY. [82]

United States Circuit Court, Southern District of New York.

LEOPOLD BARUCH
vs.
THE UNITED STATES. } No. 4419.

NEW YORK, *April 5, 1907.*

Present: Albert H. Washburn, Esq., for the importer; [83] J. Osgood Nichols, Esq., asst. U. S. attorney, for The United States.

It is hereby stipulated and agreed by and between the attorneys for the respective parties to this suit that the following named witnesses, having been first duly sworn by Mr. Commissioner Shields, may be examined herein and their testimony shall be received with the same force and effect as if one of the general appraisers, to whom the matter was referred to take further testimony, was present.

LEOPOLD BARUCH, called as a witness in [84] his own behalf, being duly sworn, testified as follows:

By Mr. WASHBURN:

Q. Mr. Baruch, your full name is——?
A. Leopold Baruch.
Q. Where is the place of your business?
A. 19 Union Square.
29 Q. Under what name and style do you do business? [85]
A. Leopold Baruch.

Q. What line of goods do you handle?

A. Notions and fancy goods.

Q. And prior to being in business yourself were you for a number of years engaged with A. Steinhardt & Brother, who handle the same line practically that you do?

A. Yes.

Q. Now, do you specially carry a line of goods which come to you invoiced as featherstitched braid?

A. Yes, sir.

Q. Is that a large feature of your business? [86]

A. Yes, sir.

Q. Have you, at my request, procured samples which are fairly and thoroughly representative of the class of articles which come invoiced to you as featherstitch braids?

A. Yes, sir.

Q. Referring now to the term featherstitch braids, is that a foreign term—one in general use abroad?

A. Yes, sir.

Q. By the shippers?

A. Yes, sir.

Q. And does it cover a variety and line of goods which are widely different in design and appearance? [87]

A. Yes, sir.

Q. Now, referring, Mr. Baruch, to a variety of goods which come invoiced to you as featherstitched braids, and which have the plain selvage edge, have you indicated on your invoices items covered by goods of that character?

A. I did.

Mr. NICHOLS. I object to any testimony as [88] to what goods are invoiced at, as not being competent to show what was the trade designation of the imported merchandise in 1897.

Q. Referring to goods of the character that I have just mentioned, will you produce a representative line of them?

A. Yes, sir [producing a number of samples].

Mr. WASHBURN. I offer these samples in evidence.

(Same received and marked "Importer's Collective Exhibit A.")

Q. How have you marked those on the invoices? [89]

A. I marked them "Exhibits A, B, and C."

Q. But referring especially to this lot here—collective lot which I have marked "A"—how are they described on the invoices?

A. Featherstitch braids.

Q. But what mark have you used to designate them?

A. Marked "A."

Q. So that wherever "A" appears on your invoices it covers goods of which this importer's collective Exhibit A is a thoroughly representative line; that is so, is it?

A. Yes, sir. [90]

Q. Now, have you marked on the invoices another variety of goods which are invoiced in the same manner, which have a scalloped or a looped edge?

A. Yes.

Q. Is this collective sample which I show you a thorough and representative sample of goods of that character?

A. Yes, sir.

31 Q. How are they marked on your invoices? [91]

A. Marked "B."

Mr. WASHBURN. I offer that collective sample in evidence.

(Same received and marked "Importer's Collective Exhibit B.")

Q. Is there still another class of articles of still another design, which are described on your invoices as featherstitched braids?

A. Yes, sir.

Q. And which you have not marked yourself?

A. Yes, sir.

Q. Is this collective sample which I show you fairly representative of goods of that character? [92]

A. Yes, sir.

Mr. WASHBURN. I offer that in evidence.

(Same received and marked "Importer's Collective Exhibit C.")

Q. Is that term used by your foreign shipper, referring to the term "featherstitched braids," to cover goods of the character which are produced in evidence here to-day?

A. Yes, sir.

Q. And you have only indicated on your invoices two varieties? [93]

A. Yes, sir.

Q. Those which are marked "A?"

A. Yes, sir.

Q. And those which are marked "B?"

A. Yes, sir.

Q. And the letter "A" refers to goods of the plain selvage edge?

A. Yes, sir.

32 Q. And the letter "B" to the goods of the scalloped or looped edge, corresponding to the collective [94] exhibit which I show you, Exhibit B?

A. Yes, sir.

Q. Now, Mr. Baruch, referring more especially to the class of goods represented by collective Exhibit A, for what purposes are they chiefly employed?

A. They are chiefly employed by manufacturers of muslin underwear and infants' wear.

Q. Infants' dresses?

A. Infants' dresses.

Q. For covering up seams?

A. For covering up seams.

Q. Is the term "seam binding" a narrower and [95] more specific term for goods of this character, referring to the goods shown by collective Exhibit A?

A. Yes, sir.

Q. Have any of these goods, referring to collective Exhibit A again, the feathered edge?

A. No, sir.

Q. You have sometimes imported braids, have you?

A. I did.

Q. Do you know or have you encountered in your business experience any braids whatever which had a plain selvaged edge?

A. No, sir. [96]

Q. Whether or not a plain selvaged edge is a characteristic of tapes and bindings?

A. Yes, sir.

Q. Would a request, for example, for a complete line of bindings and tapes, especially bindings, be complete without an assortment of goods represented by these two collective Exhibits A and B?

A. No.

33 Cross-examination by Mr. Nichols: [97]

Q. Featherstitch braid is a kind of braid that you import quite generally?

A. Yes, sir.

Q. How long have these been known as featherstitch braids?

A. As long as I can remember; it is about fourteen years.

Q. And known by any other name than featherstitch braids?

A. They are known by names such as seam binding, finishing tapes, and herringbone.

Q. Do you mean to testify that those things are all different kinds of featherstitch braids? [98]

A. All the same.

Q. Your testimony refers to all the articles marked "Exhibits A, B, and C," which have just been shown you?

A. Yes, sir.

By Mr. WASHBURN:

Q. And, Mr. Baruch, referring to the period on and before July 24, 1897, these different names that you have enumerated were all employed indifferently to describe all these goods, were they?

A. Yes, sir.

Q. I understand you to say that you have not marked goods of this character "Collective Exhibit C," on your invoices? [99]

A. No.

Q. Referring to the term seam bindings, for example, I suppose they would not describe goods of this character referring to collective Exhibit C?

A. No, sir.

HENRY L. BLASKOPF, called as a witness on behalf of the importer, being duly sworn, testified as follows:

34 By Mr. WASHBURN:

Q. Mr. Blaskopf, what is your occupation?

A. Manufacturer of infants' wear and children's dresses.

How long, speaking generally, have you been engaged in that business?

A. Eighteen years—about.

Q. Your present place of business is——

A. In New York; corner of Houston and Lafayette Streets.

Q. And under what name and style do you do business?

A. Blaskopf & Company.

Q. I direct your attention especially to the class [101] of articles generally represented by importer's collective Exhibit A; are you familiar with goods of that character?

A. I am.

Q. Do you use them in your business?

A. Extensively.

Q. For what purpose?

A. Finish off garments, or in one sense, to cover the seams of the garments, so as to give a much better appearance.

Q. Have you produced, at my request, a garment showing the use of these articles in the manner which you have just indicated?

A. Yes, sir. [102]

Q. This the exhibit which I now hand you of such an article.

A. Yes, sir.

Q. That is of your own manufacture, is it?

A. That is of my own manufacture.

Q. That is typical of the use to which you put these goods, is it?

A. Only for that purpose.

35 Q. How long have you been so using these goods? [103]

A. As long as I am in business.

Q. This a garment of your own manufacture?

A. Yes, sir.

Mr. WASHBURN. I offer it in evidence and ask that it be marked as an illustrative exhibit.

(Same received and marked "Importer's Illustrative Exhibit D.")

Q. Will you point out on this garment as well as you can in general language the way and manner in which these articles are used?

A. Either straight or in a circle. [104]

Q. Whereabouts is this article used?

A. Yoke and sleeve.

Q. And do you employ or have you employed plain goods of the same general character for the same purpose?

A. More extensively than the featherstitch goods.

Q. Will you produce a garment showing the plain binding?

A. Yes [producing an article].

Q. This was manufactured by you, was it?

A. Yes, sir.

Mr. WASHBURN. I offer that in evidence. [105]

(Same received and marked "Importer's Illustrative Exhibit E.")

Q. What are these articles, Exhibits D and E?

A. Infants' dresses.

Q. What do you know these articles as (referring to collective Exhibit A)?

A. There are so many different names for them; featheredge, banding, seam binding; that is about all.

36 Q. Has, for example, this featheredge, binding [106] or banding, as you call it also, any advantage over the plain banding or binding?

A. The advantage is, it will work better in a circle than the plain.

Q. Can you tell us why that is?

A. I am not a practical— It will appear by itself that the featheredge goods will either twist or turn easier or be more pliable under the machine than the straight goods will be, because the plain goods are made stiffer.

By Mr. NICHOLS:

Q. You mean the unornamental plain have no design whatever on them? [107]

A. Have no design whatever on them.

By Mr. WASHBURN:

Q. Referring to goods of this character which you have identified in collective Exhibit A, what is their sole or exclusive use so far as you know?

A. As far as I know I would never use it for anything else except as you see here.

Q. That is, for covering seams?

A. For covering seams.

Q. You have had an extensive experience in goods of this character as you have testified?

A. Yes, sir. [108]

Q. Do you trim garments that you make more or less?

A. We do.

Q. With what?

A. Embroideries and laces.

Q. And do you ever use goods of this character, referring to collective Exhibit A, for such purpose?

A. No, sir.

37 Cross-examination by Mr. NICHOLS: [109]

Q. The difference between the braid that appears upon these two infants' garments marked "E" and "D" is that in one case the braids are ornamented and in the other they are plain?

A. Yes, sir.

Q. In one case they are used for ornamentation?

A. No; they are both used for the same purpose, to cover seams.

Q. Just answer my question, please. If the braid upon the exhibit marked "D" is ornamented in the manner in which it is, is that ornamentation put on for nothing or for some purpose?

A. Put on for some purpose. [110]

Q. What is that purpose?

A. To cover the seam.

Q. I asked you about the ornamentation on the braid, why that was put on?

A. I suppose for ornamentation.

Q. And in that respect the braid differs from the braid on which there is no ornamentation?

A. Yes, sir.

Q. So that one is used for the purpose of ornamenting and the other is not used for that purpose?

A. On the braid.

By Mr. WASHBURN: [111]

Q. But not on the garment?

A. On the garment it is put on for the purpose that I have stated heretofore, to cover the seam.

By Mr. NICHOLS:

Q. But there is also the purpose of decoration in respect to Exhibit D that doesn't exist in regard to the other one?

A. Yes, sir.

38 Q. Would you call a decorated braid put on for [112] decorative purpose as well as to cover the seam a trimming?

A. Not in our business, not in the manufacture of our garments.

Q. What do you call this?

A. A finish of the garment.

Q. What else do you call it—a braid?

A. A braid.

Redirect examination by Mr. WASHBURN:

Q. Do you call it a binding also?

A. You can not very well call it a binding, no; more of a braid, finishing braid. [113]

Q. It is, however, a seam binding?

A. It is a seam banding.

Q. That would be a more narrow term for it, would it?

A. Yes.

Mr. NICHOLS. I object to the question as calling for a conclusion.

Q. Do you desire to be understood as saying that these feather-edge goods are used for decorative purposes?

A. I did not say so. [114]

Q. What did you desire for us to understand?

A. I said it was used for the purpose of covering the seams, to give the garment a finish.

Q. And exclusively for that purpose?

A. Exclusively for that purpose.

By Mr. NICHOLS:

Q. Paint is used in a picture for the purpose of covering canvas?

A. Yes, sir.

39 Q. And in that sense this braid covers the seam, [115] although it is highly ornamental?

A. Yes.

By Mr. WASHBURN:

Q. It imparts a certain finish, does it, in the same sense that the plain binding or banding does?

A. Yes, sir.

Q. And when you use the term braid in connection with the feather-edge goods you use it in the same sense in which you use the term braid in connection with the plain goods also?

A. Yes, sir.

Q. One is just as much a braid as the other from your point of view? [116]

A. Yes.

Q. Neither of them are braided articles, or don't you know about that?

A. Don't know nothing about that.

Q. Don't know whether they are woven or braided or not?

A. I do not.

By Mr. NICHOLS:

Q. Did you manufacture these articles, illustrative Exhibits D and E?

A. Yes, sir.

Q. Referring to this plain braid, or whatever you call it, on Exhibit E, it is somewhat less expensive than the decorated article? [117]

A. Yes, sir.

Q. As a manufacturer of these articles, can you state the difference in cost between these braids that are used as you say to cover seams, the one decorated and the other plain?

A. 50 to 75 per cent. This is a domestic article (referring to Exhibit E); and the other imported (referring to Exhibit D).

40 Q. I am referring in my question as to the comparative [118] cost of the decorated and the plain braid?

A. 50 to 75 per cent.

Q. That is, the decorated braid is worth from 50 to 75 per cent more than the plain?

A. Yes, sir.

By Mr. WASHBURN:

Q. Do you know these goods, referring to the plain and the featheredge goods, as finishing tapes also?

A. Yes, sir.

Q. That is just as generally employed as any of the other terms that you have mentioned? [119]

A. Yes, sir.

By Mr. NICHOLS:

Q. And a finishing tape is a plain article?

A. Not necessarily.

Q. Usually it is, isn't it?

A. Usually; yes.

Q. And when it is ornamented it might be known as something else?

A. Not to my knowledge.

Q. A trimming—couldn't it be so ornamented that it would be used as a trimming?

A. I have never used it as such. [120]

Q. You don't know that it couldn't be?

A. I couldn't say whether it could or whether it could not.

Q. These threads that ornament the tape in Exhibit D, do they cover the seam, those threads forming the pattern, this featherstitch work?

A. It covers the seam.

Q. I am referring to the threads; are they necessary to cover the seam?

A. Yes.

41 Q. Are they necessary in order to cover that seam? [121]

A. Certainly not.

By Mr. WASHBURN:

Q. That thread design that the district attorney refers to also known as herringbone?

A. Yes, sir.

Q. The ornamentation to which the district attorney refers—this herringbone itself—is a part of the article itself?

A. Certainly.

Q. These goods that you have referred to, illustrative Exhibits D and E, have been in your stock some time? [122]

A. We always carry them in stock.

Q. Have you any idea as to whether the difference in cost between what the district attorney calls the plain goods and the feather-edge goods is due to the herringbone threads or to other elements?

A. I suppose partly to what the district attorney calls ornamentation and partly to the import duty; one is a domestic article. I remember the time when we had to import this plain binding; but at least as far as we are concerned we are using nothing else in the plain goods but the domestic goods now. [123]

JULIUS SONN, called as a witness on behalf of the importer, being duly sworn, testified as follows:

By Mr. WASHBURN:

Q. What is your occupation?

A. Manufacturer of children's dresses and caps, commonly known as infant's wear.

42 Q. How long have you been engaged in that business? [124]

A. About twenty years.

Q. Under what name and where do you do business?

A. Julius Sonn & Company, 41 to 51 East 11th Street.

Q. Referring especially to the class of goods represented by collective Exhibit A, are you familiar with goods of that character?

A. I am.
Q. Use them largely in your business?
A. Quite largely; yes.
Q. And have done so for a good many years?
A. A great many years. [125]
Q. For what purpose are they used?
A. They are used for covering seams, raw edges of muslin, cambrics, or nainsooks, or whatever fabric it is, where two parts are joined together.
Q. Is that their sole use or chief use?
A. That is their chief use that I know of. I have never used them for any other purpose.
Q. And you have had an extensive business experience?
A. Quite so.
Q. Under what trade name do you recognize those goods?
A. Banding, herringbone binding, and sometimes [126] they are called featherstitch braid, herringbone braid.
Q. All those names?
A. All those names.
Q. All those names are used to describe them?
A. They are meant for the same thing.
Q. And all are indifferently employed in the trade, and were prior to 1897?
A. I have never seen them employed for any other purpose than just for the purpose I have stated before.
43 Q. Have you with you an article showing the use [127] of these feather-edge goods or featherstitch goods?
A. Yes, I have [producing an article].
Q. Is this such an article?
A. Yes.
Q. What is this?
A. This is the herringbone binding.
Q. What is the article itself?
A. This is an infant's cap.
Q. That is an article that you manufacture, is it?
A. It is.
Mr. WASHBURN. I offer it in evidence. [128]
(Same received and marked "Importer's Illustrative Exhibit F.")
Q. Have you also with you garments showing the use of these feather-edge goods in precisely the same manner as was described by the preceding witness?
A. Yes, precisely.
Q. Children's dresses, are they?
A. Yes, sir.
Mr. WASHBURN. I will not offer these articles in evidence, the witness stating that they are similar to the exhibits which are already [129] in evidence, Exhibits D and E.
Q. You have here another cap, have you, showing the use of feather-edge goods?

A. Yes.
Q. Same way as this illustrative Exhibit F?
A. Yes.
Mr. WASHBURN. That will not be offered in evidence; it would be merely cumulative.
44 Q. Would the term seam banding or herringbone [130] binding more aptly describe these goods than the term feather-stitch braid?
A. It would.
Q. You buy these extensively in the market, these feather-edge goods?
A. I do.
Q. And have purchased of different dealers?
A. Yes, sir.
Q. You have done that for a good many years, have you?
A. Yes.

By Mr. NICHOLS: [131]

Q. How long have you been calling these featherstitch braids?
A. Oh, almost as long as—featherstitch braids?
Q. Yes.
A. I understand that a braid is a different article than this here. We call this binding.

By Mr. WASHBURN:

Q. Referring to the goods represented by collective Exhibit A which are employed on Exhibit F—I am referring to this braid or whatever you decide to call it, it is used—?
A. Herringbone is used; to my recollection herringbone binding is the most common word used in this country. [132]
Q. That is the original name?
A. That is the original name; this stitch is exactly what they call a herringbone.

Cross-examination by Mr. NICHOLS:

Q. Is what you mean that this, as it is used on the cap, is used as a binding?
A. As a seam covering and sometimes as a binding.
45 Q. And if used for something else it would be called braid? [133]
A. I understand by a braid a different article. Do you want me to give the definition of a braid?
Q. No; all I want to know is how long this featherstitch article has been known both by the terms featherstitch braids and as a binding?
A. We always called it—all our boys used to call it a featherstitch binding.
Q. This baby's cap?
A. Yes, sir.

Q. Wouldn't a plain binding be just as useful as far as the binding is concerned?

A. It would be just as useful, but the—— [134]

Q. What word do you use in the trade to distinguish a plain binding from this ornamented article?

A. We use a great deal of this herringbone binding; and the chief reason they use it in preference to the plain binding is that when this binding is stitched on that isn't exactly straight and the stitching wouldn't show as much for the herringbone binding as it would in a plain binding; this is more expensive than the plain binding, but in the end it would look better.

Q. It would look better?

A. It would look better and is more fancy than a plain binding. [135]

By Mr. WASHBURN:

Q. It imparts a certain finish to it?

A. It imparts a certain finish to it; it looks more pleasing to the eye.

By Mr. NICHOLS:

Q. A braid is something more eleborate and decorative than a binding usually is?

A. Most assuredly.

46 Q. Are you quite sure that you can draw the [136] line between what is known as braid and what is known as binding?

A. I think I could.

Q. As a braid gets to be more and more elaborate, decorative, it naturally comes more near what you understand to be a braid?

A. Yes.

Q. Referring to the featherstitch or featheredge shown on the article on illustrative Exhibit F, you don't think that that is quite elaborate or ornamental enough to become a braid?

A. I wouldn't call it a braid, no. I am sorry I didn't bring a braid along. If I wanted to ornament [137] it it would be one of those Val. insertions or a piece of embroidery.

By Mr. WASHBURN:

Q. You would then use the article as a trimming?

A. Then I would call it a trimming.

Q. Did you ever hear these goods represented by collective Exhibit A designated as trimmings?

A. Oh, yes.

Q. Use them as trimmings as well as bindings?

A. We don't use them as a trimming, no; there is nothing to them to be used as a trimming.

Q. What is there in this article, illustrative Exhibit F, you think is a trimming? [138]

A. This here [indicating] Valenciennes insertion.

By Mr. NICHOLS:

Q. What do you use this lace-like article there for that comprises extreme edge?

A. The ornamentation of the article.

Q. You use that as an article—that is a trimming?

A. By itself.

47 By Mr. WASHBURN: [139]

Q. That is ornamented?

A. That is ornamented.

By Mr. NICHOLS:

Q. And right in the middle of it is placed this article which you call a——?

A. Featherstitch binding.

Q. That is used also to a considerable degree to ornament the article?

A. No; to cover both seams of the Valenciennes lace.

Q. What seams are there in the Valenciennes lace?

A. I can rip a little piece off and show it to you. [140]

Q. Couldn't that lace be used without the other?

A. This lace here can't be stitched on the very edge; it would show a sort of rough edge if this wasn't covered by this here binding.

By Mr. WASHBURN:

Q. Are there two pieces there?

A. There are two pieces there, one one way and one the other.

By Mr. NICHOLS:

Q. You mean two pieces of lace?

A. I mean two pieces of lace.

Q. Couldn't that be a single piece of lace? [141]

A. Yes.

Q. And wouldn't you put this binding as you put it in there if it were a single piece of lace for ornamental effect?

A. I would use it to cover the seams.

Q. But there wouldn't be any seam?

A. There would be one seam; you can't hide that one seam in one side of the lace.

48 Q. Don't you stitch these other articles on, this tucking on, without being necessary to cover the seams? [142]

A. Yes, sir. This here is a hem (referring to insertion in cap) and sewed in at the same time that the lace is and shows on the top a covered seam; the insertion in the tucking is put in with one operation; that covers a plain and finished surface on the top of the cap or on the outside of the cap.

Q. I observe that the stitches by which this tucking is sewed on the bottom of the cap is plainly visible?

A. Yes.

Q. Why couldn't you sew on the lace in the same way? [143]

A. Because it would show a rough edge on the outside.
Q. You use thread to do it?
A. Yes.
Q. You don't use anything but thread to sew on the tucking?
A. Yes; but I see that the lace here is under a double fold of the tuck. The tuck covers the raw edge of the insertion.
Q. I am not speaking about covering up the edge of the lace?
A. Without this featherstitch braid on the lace attached to the front of the cap would show an unfinished state when the cap is finished; with the binding it makes it more sightly. [144]

By Mr. WASHBURN:

Q. Referring to the herringbone goods?
A. Referring to the herringbone goods. It would be stronger for the wear and tear, which would hold both for the plain and for the featherstitched.
Q. It covers the seam and supports it?
A. Yes.

49 By Mr. NICHOLS: [145]

Q. Could that lace have been made in a single piece?
A. It could.
Q. And it would have been no more expensive than to have used two pieces, would it?
A. Two pieces would cost more than the one piece naturally.

By Mr. WASHBURN:

Q. Even if you used the one piece it would still be necessary to bind it?
A. Yes.
Q. With the herringbone goods?
A. Yes. [146]
Q. And you have had an extensive experience in manufacturing goods of this character?
A. Yes.
Q. And know what the trade requires?
A. Yes, sir.
Q. And what the article requires to be finished?
A. Yes, sir.

DANIEL WEILLER, called as a witness on behalf of the importer, being duly sworn, testified as follows:

By Mr. WASHBURN: [147]

Q. With what concern are you connected?
A. Weiller & Sons.
Q. And you are a member of that firm, are you?
A. Yes, sir.
Q. What is their business?

A. Importing notions and fancy goods.

Q. Do you handle, and handle largely, goods represented by collective Exhibits A and B that you have seen here to-day?

A. Yes.

50 Q. What is their chief or predominant use? [148]

A. For binding seams—covering seams and binding seams.

Q. Whether or not the term featherstitch braids as it is used in the trade is a foreign term used by your shippers to describe the goods?

A. Yes.

Q. That is the way they label them, is it?

A. Yes, sir.

Q. And it covers goods of the character shown by these Exhibits A and B and C that you have seen here to-day?

A. Yes, sir.

Q. Have you sometimes ordered labels from the Sanford Narrow Fabric Company? [149]

A. Yes, sir.

Q. And in ordering such labels have you——?

A. We got foreign labels to imitate——

Q. With the name "Germany" stricken off?

A. Yes. That is not allowed to put on and they had to leave that off.

Q. Do you know of any braids which have a plain selvage edge?

A. No.

Q. Such edge is rather a characteristic of what kind of goods?

A. Characteristic of all goods made on a loom.

Q. Especially bindings and tapes among others? [150]

A. Characteristic of any goods made on the loom.

Q. These goods here are made on a loom and not on a braiding machine?

A. Made on a loom.

Q. Is this design and the plain edge selvage goods, for example, frequently known as herringbone?

A. The article itself is known as herringbone. The reason

51 is that that design of herringbone is the first design that was used; and as they were [151] further elaborated they were always known by that name.

Cross-examination by Mr. NICHOLS:

Q. Were you familiar as far back as 1897 with what these goods were known in the trade as?

A. Yes.

Q. Did you handle them in wholesale quantities?

A. Very extensively.

Q. And they were known by various names?

A. Yes.

Q. And among them, featherstich braids?

A. Yes, sir. [152]

MORTIMER HYMAN, called as a witness on behalf of the importer, being duly sworn, testified as follows:

By Mr. WASHBURN:

Q. Mr. Hyman, were you for a number of years connected with Strauss Brothers?

A. Yes; 33 years.

Q. What line of goods did they handle?

A. Some wares, fancy goods, and notions.

Q. Among other things did they carry goods represented by these collective exhibits that you have seen here to-day? [153]

A. Yes, sir.

Q. Dealt in them in wholesale quantities?

A. Quite extensively.

Q. Referring more especially to the plain edge selvage goods, shown by collective Exhibit A, what is their predominating or chief use?

A. They are used for covering seams on garments and infants' wear of different kinds.

52 Q. Used for trimming? [154]

A. They might serve as ornamentation after covering the seams.

Q. That would be incidental, would it?

A. Yes, sir.

Q. Just as the plain goods also that you have seen here to-day?

A. Yes.

Q. Referring to goods of this character (on Exhibit E)?

A. Yes; same purpose and use.

Q. Would the term binding and herringbone binding be a narrower and more specific term to cover goods of this character (referring to collective Exhibit A)? [155]

A. Yes.

Q. When you were with Strauss Brothers did the firm sometimes order labels to cover goods of this sort in evidence from the Sanford Narrow Fabric Company?

A. We did, yes.

Q. And in ordering labels as you did what practice did you follow?

A. We copied the label which was used in Germany.

Q. By your foreign shippers?

A. Yes.

Q. Is it true that the term featherstitch braid is [156] one which is primarily and generally employed by the foreign shippers to describe these goods, referring to the articles represented by these official exhibits?

A. Yes, sir.

Q. And that in this country they are bought and sold under a great variety of names?

A. Yes.

Q. That is true, is it?

A. Yes.

53 Q. One is practically as specific as the other? [157]
A. Just about the same.
Q. The use of goods represented by Exhibit B practically the same as Exhibit A?
A. Yes, sir.
Q. Do you know of any braids in your trade experience which have a plain selvage edge?
A. No.
Q. That is rather a characteristic of what kind of goods?
A. The goods that are made on the loom.
Q. Such as tapes and bindings?
A. Tapes and bindings.
Q. Did you ever know of any tapes or bindings to be made on the braiding machine? [158]
A. No.
Q. Are these goods here made on the braiding machine?
A. No.
Q. They are loom goods?
A. They are made on looms.

Cross-examination by Mr. NICHOLS:

Q. Do they make trimmings on ribbon machines?
(Objected to.)
Q. You don't know about that? [159]
A. No.
Q. Do you know anything about the manufacture of these goods apart from selling them?
A. Yes; I know how they are manufactured.
Q. Does it make any difference what the machine is called as to what the goods are?
A. I shouldn't think it would.
Q. Is there a great variety of braids?
A. There is quite a large variety of braids.
54 Q. Will you describe the different kinds of [160] braids—what you mean by a large variety?
A. There are worsted braids, Hercules braids, dress braids of all descriptions, used for different purposes; that covers the general line.
Q. How about these featherstitched braids?
A. They are a variety, featherstitching in the different patterns or designs; it is all one class of goods, all made in the same way.
Q. The design is the same, but you never heard of featherstitch braids?
A. Certainly call these featherstitched braids (referring to collective Exhibit A); it is one of the terms by which they are known. [161]
Q. How long has that been known as featherstitch braids?
A. A great many years.

By Mr. WASHBURN:

Q. Also be known as herringbone?

A. They are known under a great many names: Seam banding, seam stitching, herringbone, finishing tape, featherstitch braid.

By Mr. NICHOLS:

Q. They were known as featherstitch braid as far back as 1897?

A. Yes, sir. [162]

By Mr. WASHBURN:

Q. And also by these other names as far back as and prior to 1897?

A. Yes, sir.

MORRIS STEINHARDT, called as a witness on behalf of the importer, being duly sworn, testified as follows:

55 By Mr. WASHBURN: [163]

Q. Mr. Steinhardt, you are a member of the firm of A. Steinhardt & Brother?

A. Yes.

Q. And, as it already appears, you handle notions and fancy goods?

A. Yes, sir.

Q. Handle goods like the collective Exhibits A, B, and C?

A. Yes, sir.

Q. Referring especially to the plain edge selvage goods, what is their predominant or chief use?

A. Seam coverings.

Q. That is their overwhelming use?

A. Yes. [164]

Q. Practically their exclusive use?

A. Yes.

Q. Whether or not they are known as seam bindings or herringbone?

A. Seam bindings, herringbone bindings, featherstitch braids—some people call them featherstitch tapes.

Q. Referring to the term featherstitch braid, is that a term which is primarily and chiefly employed by the foreign shippers?

A. Yes, sir.

Q. To cover a great variety of goods like these goods here? [165]

A. Yes.

Q. Would a narrower and more specific term for these goods, such as Exhibit A, be seam bindings or herringbone?

A. Seam bindings or herringbone or seam coverings.

Q. That would be a narrower term, would it?

A. Yes.

56 Q. The term herringbone and featherstitching is used to describe the peculiar design of the goods? [166]

A. Yes; the herringbone were the first patterns made, the herringbone design.

Q. Was that the original name so far as you recall it in your trade experience?

A. Yes, sir.

Q. And they have been known as herringbone for a great many years, have they?

A. Yes, sir.

Q. Do you recall advertising these goods in the Drygoods Economist at any time?

A. Yes, sir.

Q. If you have ever grouped them as featherstitched [167] braids, what practice did you follow in doing so?

A. I referred to all this line of goods for the purpose of seam bindings, the very design.

Q. Did you use the foreign labels for that purpose?

A. Yes, sir.

Q. Look at those Exhibits D and F, and say from an examination of them whether they disclose typical and representative use of these exhibits in question.

A. Yes, sir.

Q. Of the featherstitched goods?

A. Yes, sir. [168]

Q. Do you know of any braids which have a plain selvage edge?

A. No, sir.

Q. Such edge is rather characteristic of what line of articles?

A. Tapes.

Q. Bindings also?

A. Yes; tapes and bindings.

57 Q. Referring to these official exhibits, are they all loom goods? [169]

A. Yes, sir.

Q. Not made on the braiding machine, are they?

A. No, sir.

By Mr. NICHOLS:

Q. All braids aren't made on the braiding machine, are they?

A. That I couldn't say.

By Mr. WASHBURN:

Q. Do you know of any article which is made on a braiding machine which is not a braid?

A. Not to my recollection. [170]

Q. Do you know of any braids made on a braiding machine that have a selvage?

A. No.

Q. Would a request for a complete line of samples of bindings and tapes, especially bindings, be complete without the inclusion of featherstitched goods, such as are represented by the collective Exhibits A and B?

A. No, sir.

Cross-examination by Mr. NICHOLS:

Q. Are there a good many different kinds of braids?

A. Yes, sir. [171]

Q. Were you dealing in braids in 1897?

A. In featherstitch braids—featherstitch bindings.

Q. You mean featherstitch braids like these articles on the table, referring to the various exhibits?

A. Yes, sir.

Q. Do you mean they were known as featherstitch braids in 1897?

58 A. Featherstitch binding or featherstitch braid or seam binding. [172]

Q. You mean there are a good many different kinds of braids?

A. Not this kind of braid. If anybody would give a request for samples of seam bindings or seam covers we would send them featherstitch braids, tapes, etc.

By Mr. WASHBURN:

Q. Referring to the class of articles that you carried in 1897, did you carry Renaissance braid?

A. Yes.

Q. And Honiton braid?

A. Yes, sir. [173]

Q. Give us some other kinds that you carried.

A. Draw braids, Hercules braids.

Q. Did they all have scalloped or a fancy edge?

A. Yes, sir.

By Mr. NICHOLS:

Q. What are braids used for?

A. For trimming purposes.

Q. Ornamental purposes?

A. Fancy braids; yes.

By Mr. WASHBURN:

Q. Are these goods, referring especially to A [174] and B, used for trimming purposes?

A. No, sir.

Adjourned to April 9, 1907, 2 p. m.

59 United States Circuit Court, Southern District of New York.

[175]

LEOPOLD BARUCH
vs.
THE UNITED STATES. } Suit No. 4419.

NEW YORK, *April 9, 1907.*

Present: Albert H. Washburn, Esq., for the importers; J. Osgood Nichols, Esq., assistant U. S. attorney, for the United States. [176]

(Same stipulation as hereinbefore made as to swearing of witnesses by U. S. commissioner, etc.)

JOSEPH GIDEON, called as a witness on behalf of the importers, having been duly sworn testified as follows:

By Mr. WASHBURN:

Q. With what concern are you connected?
A. S. C. Cahn & Co.
Q. Where is your place of business?
A. 519 Broadway. [177]
Q. What is your business?
A. We are manufacturers of infants' and children's headwear.
Q. How long have you been engaged in that occupation?
A. Since 1880.
Q. Are you a member of the firm?
A. I always was a member of the firm.
60 Q. Referring to the official exhibits which you [178] have examined, tell us whether or not you have occasion in the course of your business to use the same article—articles of that character?
A. Yes, we use lots of them.
Q. For what purpose do you use them?
A. We use them for covering up seams on the back of caps.
Q. Why is it desirable to use them that way?
A. It is handy to put on.
Q. Have you at my request brought with you a cap such as you make showing the articles like the official exhibits employed?
A. Yes, certainly. [179]
Q. Is this the article [handing witness a cap]?
A. That is the article.
(Sample is offered in evidence as an illustrative exhibit, admitted and marked "Illustrative Exhibit G.")
Q. This article, referring to the illustrative Exhibit G, shows the official exhibit in such use as you employ it, does it?
A. Yes, sir.
Q. Is that its sole use as far as you are familiar with it?
A. That is the only way I have ever used it.
Q. You have had an extensive experience? [180]
A. Oh, yes, since 1880.
Q. Extending over twenty-seven years?
A. Yes, sir.
Q. During all that time you have been familiar with articles of this sort?
A. Yes, sir; sometimes more, sometimes less, but we have always used it.
Q. Under what name are these articles known?
A. We know them as herringbone. I heard some people call it featherstitch.
61 Q. Featherstitch and herringbone? [181]
A. Yes; that is the only name I ever knew it by.
Q. Herringbone binding and featherstitch binding also?
A. Yes, sir.

Q. Those are practically all the names you have known these articles under?

A. Those are the only names I know them under.

By Mr. NICHOLS:

Q. Your business has been confined to making these children's caps?

A. Infants' and children's caps.

Q. You have no experience in the use of these articles apart from the manufacture of those caps? [182]

A. No.

Q. When you said that you used these braids on certain portions of your caps you did not mean to testify that they could not be used on other articles in different ways?

A. I don't know. It is the only thing that we manufacture. I myself don't think it could be used.

By Mr. WASHBURN:

Q. Basing your answer upon your somewhat extensive trade experience of twenty-seven years and your familiarity with these official exhibits during that period, have you known of their being used [183] for any other purpose than the purpose for which you employ them, to wit, covers for binding seams?

A. No, sir; I have never known them to be sold for anything else.

By Mr. NICHOLS:

Q. But you haven't any positive knowledge as to what they can be used for?

A. No; I have no knowledge of that.

62 Q. Seams in other articles are not always—[184] seams in other articles are different from the seams in hats as regards where they occur?

A. No; I don't think so. You might have them finished different, fancy binding than this, but it would be the same thing.

Q. You say "binding"?

A. That is just my off-hand opinion. We have only used these goods in our business just for that purpose. Now, you are asking me whether they can be used for something else. I could not tell you. I suppose they can be used on anything, but I don't know it would be used.

Q. Trimmings are not always used to cover seams? [185]

A. Trimmings?

Q. Yes; trimmings?

A. Sometimes may be used to cover seams. A small, narrow trimming might be.

Q. But it is not always used for that?

A. I don't know. I don't know anything about any other business.

By Mr. WASHBURN:

Q. You don't know anything about trimmings?

A. Oh, I know trimmings; yes. I know a whole lot about them.

By Mr. NICHOLS: [186]

Q. Would you not call that, generally speaking, a trimming?

A. No; I would not call that trimmings. If you ask me why, I will tell you. I would not call them trimmings.

Q. Has it not a decorative effect?

A. I don't think so.

Q. Wasn't it plain—?

63 A. It is used because when you make 200 or 300 styles of goods, 200 plain, you must have a little [187] variety; you have to have something else.

Q. Then the manufacturer does it simply to amuse himself?

A. No; for a variety of styles, to make the goods look a little different.

Q. Doesn't he do it to make them look a little bit better?

A. Perhaps it would improve them some.

Q. The idea is to get a better price for them?

A. No; there is a small difference in the cotton braids; it would be perhaps 1 per cent difference.

Q. What kind of braid do you call this?

A. I call it just as I said; never called it anything else, featherstitch or herringbone. That is [188] the only name I have ever known them by. Some years we use a lot and sometimes we do not.

Q. Do you mean featherstitch braid?

A. I don't know; you can call it a braid or binding or anything like that. I have never called it anything else. When I wanted a lot I sent a postal card, send me fifty gross herringbone. I would not use any name, whether braid or binding.

Q. Well, the house you have been dealing with would know they were wanted?

A. Yes; they would know if I say herringbone.

Q. If I should require the article and said, send me so and so many herringbone they would not [189] know what I wanted?

A. They would know herringbone would be these goods, but there might be different widths and qualities; but that would not be my case because I have had them before and they would know exactly what I wanted because I use it.

Q. Of course you don't mean to testify as to how some other people would use it?

A. How can I? I don't know anything about it.

64 By Mr. WASHBURN: [190]

Q. You said something about a difference of one per cent between the cost of using articles like that?

A. It probably would not be half per cent, as far is I know.

Q. We will say a difference in the cost somewhere around 1 per cent between using bindings or articles like the official exhibits and plain goods?

A. Yes; I am sure it would not be more than 1 per cent. It could not be. It would be so small——

Mr. WASHBURN. That's all. [191]

MORITZ HILDER, called as a witness on behalf of the importers, having been duly sworn, testified as follows:

By Mr. WASHBURN:

Q. Mr. Hilder, you are Moritz Hilder, of Samstag & Hilder Bros.?
A. Yes, sir.
Q. Engaged in the importing at wholesale of various kinds of novelties and notions?
A. Yes, sir.
Q. Have been so engaged for a number of years?
A. Yes, sir. [192]
Q. Prior to 1897 you were in the same business, were you?
A. Yes, sir.
Q. Among other things you handle goods like the official exhibits, do you?
A. Yes, sir.
Q. Now, referring to the use to which goods of this character are put, will you please tell us what the chief use is?
A. It is seam binding.
65 Q. Used to cover seams? [193]
A. For to give it a finish.
Q. A harder finish?
A. Yes, sir.
Q. Known sometimes as seam bindings?
A. Seam bindings.
Q. Featherstitch bindings?
A. Featherstitch bindings.
Q. Herringbone bindings?
A. Herringbone bindings.
Q. Are those all the names you recall describing the articles of this sort?
A. Yes, sir.
Q. Would an order for bindings be complete without the inclusion of samples like the official exhibits? [194]
A. It would not.
Q. Mr. Hilder, whether or not, if you know, the term herringbone was the original name for goods of this character?
A. It was on account of the original pattern, which was a herringbone pattern.
Q. Do you happen to know whether or not the term featherstitch braid is a more or less of a foreign term?
A. It is used as a foreign substitute simply; it is the trade name, but it is known as herringbone.
Q. But I mean abroad, is the term featherstitch [195] braid a name which is used generally to describe a great variety?
A. They mark the sample cards featherstitch braids, it is offered as featherstitch, although it is a braid.
Q. In other words, the term is of foreign origin?
A. It is a trade name.

66 By Mr. NICHOLS: [196]

Q. Where did it originate?

A. In Barmen, Germany.

Q. It is an English word—how did it originate in Germany?

A. It is a translation of the German into English.

Q. What is the German term for it?

A. I don't know that.

By Mr. WASHBURN:

Q. Mr. Hilder, have you had occasion sometimes in the past to advertise articles like the official exhibits in the Dry-Goods Economist?

A. Yes, sir. [197]

Q. You regularly did that, did you?

A. Yes; when we first went into the business.

Q. On and prior to 1897 you very regularly did that?

A. Since 1894.

Q. Will you explain how, if you did refer to articles of this sort as featherstitch braids in such publications, you came to do so?

A. We took pages out of our sample books and had them photographed and produced them in the Dry-Goods Economist.

Q. Out of sample books you obtained abroad?

A. Yes. [198]

Q. With the foreign labels on them?

A. Yes, sir; photographed them in the Dry-Goods Economist as a simple way of doing it.

Q. Would you regard the term featherstitch binding and herringbone binding as a narrow term describing goods of this kind?

A. Yes; we use one for the other. We don't know one from the other. I call it herringbone or featherstitch braid or featherstitch tape or binding.

67 Q. From your somewhat extensive trade experience, [109] would you say goods of this character are used for trimmings or practically exclusively for bindings?

A. Well, this line comes in so many different lines of patterns. We deal in some binding covers that come wider, very large widths, fancy, we can use as embellishments or trimmings; but this particular item (referring to the official exhibits) is seam covers or seam binding.

By Mr. NICHOLS:

Q. Which one are you referring to?

A. This class of goods (referring to the Exhibit A). [200]

Q. You sell braids to cover seams sometimes, don't you?

A. Not braids.

Q. Never use braids?

A. Binding, seam tape. A braid is a different article.

Q. You don't happen to handle braids?

A. We handle certain braids, coat binding for ladies' trimming braids.

Q. What are braids used for?

A. Braiding on the outside of an article; to ornament a garment on the outside.

Q. Do you mean to say the ornament is not intended to come over the seam? [201]

A. It may just happen to get on the seam, but if it is a ladies' garment that has braids on it, they have no seams to cover them.

Q. Don't seams often occur at the edge of the garment, at the place where you would naturally place the embellishment?

A. Well, you take a lady's dress, has just a seam around the
68 sleeve where the pieces are put together, but they would use it as an embellishment. [202]

Q. They put them elsewhere of course, and they put them over the seams, too?

A. I don't know.

Q. They avoid seams when they are using braids?

A. They might just happen to strike a seam or cross somewhere, but a braid as we understand it is either for binding garments. This follows the seam.

Q. You haven't referred to the bindings on this Exhibit E, have you?

A. Generally covers the seam, yes. [203]

Q. Would you call a piece of lace a binding if it covered a seam—is that what you mean?

A. You cannot cover a seam with a lace. You can insert it and ornament it, certainly, but being the lace is openwork, it would not cover anything.

Q. Would you make a trimming a binding if you put it over a seam?

A. It depends on the trimming, if compact and solid.

Q. Lace trimmings compact enough to hide the seam?

A. Lace would not be solid; if the trimming is solid, like a tape, you can cover a seam with it.

Q. Now, you are referring to this Exhibit E, are [204] you not, when speaking of binding?

A. Yes, sir.

Q. You are also referring to Exhibit D?

A. Yes.

By Mr. WASHBURN:

Q. And also Exhibit F?

A. Yes, sir.

Q. And illustrative Exhibit G?

A. Yes, sir.

69 By Mr. NICHOLS: [205]

Q. Is it not true that they have a fancy and ornamental stitch upon these so-called feather-stitch bindings or braids, irrespective of Exhibit E—is not that true?

A. Yes, the same binding is on the other exhibits, only E has just a plain tape.

Q. Exactly?

A. This (Exhibit E) used to be the original seam binding, and as people came to make these garments more elaborate they wanted something more showy, and they put this application, and it has grown from two patterns, as I remember, to any amount of patterns. [206]

By Mr. WASHBURN:

Q. But all used for the same purpose?

A. All for the same purpose and all on the same sample card marked featherstitch.

By Mr. NICHOLS:

Q. What is the purpose for which they are used, just exactly the same?

A. Seam covering.

Q. Then what is that fancy stitch that occurs in every one of them except Exhibit E—what is that for?

A. To make them ornamental. [207]

Q. Do you mean to say that these various featherstitch articles are not ornamental in every case with the exception of this Exhibit E?

A. It is a little more ornamental than plain. There are a variety of styles. If you made the binding fancy it is just the same, only a little more ornamental seam covers. It is nothing else. (Witness refers to Exhibits G, F and D.)

Q. You think the ornament has nothing to do with the name?

A. None whatever.

70 Q. You consider that when a canvas has been [208] painted in the form of a picture that it fulfils the same purpose of filling up the frame that a plain canvas did?

Mr. WASHBURN. I object to that.

WITNESS. You would not call a brick a house. You have to use a number of bricks to make a house.

Q. But if you make a column out of marble would you think it served the same purpose as one made out of iron, simply to support the house?

A. It could sustain the house.

Q. In that respect you mean they are the same, [209] because they cover the seams?

A. To my knowledge and my belief, having handled this for a number of years, it is seam-binding used for that purpose, just the same as a little silk plain binding is used to cover seams on the inside of ladies' garments.

Q. If it is not intended for display or to be seen then there is no particular reason for this fancy stitching on it?

A. None whatever—of course it is necessary to cover the seam with something.

By Mr. WASHBURN:

Q. An article so used you would regard as a trimming? [210]

A. I do not. It is a finishing out, a finishing down.

Q. Is a trimming an article which is primarily used to ornament and decorate a garment, and which in being so used does not follow the seams?

A. A trimming does not have to follow the seam.

Q. You handle various kinds of braids, do you?

A. Yes, sir.

71 Q. They are more less fancy design, are they not? [211]

A. We don't carry fancy trimmings or fancy braids. We handle them suitable for skirt braids, around the bottom of dresses, and the edges of coats, and also braids that go three-quarters around ladies' skirts, but not to cover the seams.

Q. Those are all braided articles?

A. Braids made on a braiding machine.

Q. Do you know how these are made?

A. These are woven.

Q. Referring to exhibits like some of these which I now show you, which are a part of the collective Exhibit B, having a herringbone effect, what kind of garments are they used upon in your experience? [212]

A. Light garments.

Q. Forming what?

A. Forming seam covers with wider patterns in the colors.

MAX YANKAUER, called as a witness on behalf of the importers, having been duly sworn, testified as follows:

By Mr. WASHBURN:

Q. Are you connected with A. Strauss & Company, I believe? [213]

A. Yes, sir.

Q. In what capacity, Mr. Yankauer?

A. I am a partner there.

Q. What is their business?

A. Importing notions and fancy goods.

Q. How long have you been engaged in that occupation?

A. This is the tenth year.

72 Q. They handle articles like the official exhibits which you have seen here? [214]

A. Yes, Exhibits A and B.

Q. During the time you have been in business you have handled goods of this character, have you?

A. Yes, sir.

Q. Referring to the uses to which articles of this sort are put, Mr. Yankauer, not including, however, by my question, articles covered by the Exhibit C, but the other articles, can you tell us what their general use is in trade?

A. For binding, for seam binding, covering up seams. [215]

Q. Known more or less as seam bindings, and featherstitch binding, etc.?

A. Herringbone, which is the commercial——

Q. Herringbone is the commercial name?

A. Yes, sir.

Q. That has been the name for these for a great many years?

A. As far as I know that is the original name.

Q. The term featherstitch braid is more of a foreign term?

A. I should say featherstitch braid is a sort of an arbitrary name. [216]

Q. Would an order for binding in your trade, Mr. Yankauer, be complete without including articles like the official exhibits, not, however, referring to the Exhibit C?

A. No, it would not.

By Mr. NICHOLS:

Q. What is your particular business?

A. Importing notions and fancy goods.

Q. That covers a great variety of articles, I presume?

73 A. Covers this class of goods, these cheaper goods. Not the broad [referring to Exhibit C]. We do not handle this kind of goods, not anything like that. [217]

Q. Referring to Exhibit B, you don't handle these, do you?

A. Well, yes; we have had them.

Q. To a limited extent?

A. Very limited.

Q. You don't intend your testimony then to relate to this Exhibit B?

A. This we handle [referring to Exhibit A].

Q. That is the stuff you are most familiar with?

A. Yes, sir.

Q. Now, I observe there is one sample here which is ornamented by a colored pattern—you don't mean to testify that that is known as herringbone, do you? [218]

A. Yes, it comes under the same class; comes under the same class.

Q. It is not called herringbone?

A. As far as I know, it is.

Q. You are sure about that?

A. It comes—we ask samples of herringbone and this is one of the samples—in all colors.

Q. Then the word "herringbone" has no relation to the pattern?

A. I believe originally it did; there is a herringbone pattern in there; there is also a featherstitch pattern in there. [219]

Q. But it has no longer any—it is not confined to goods of a herringbone pattern?

A. Not to-day. Originally it was.

Q. Are they herringbone braids?

A. Herringbone tape like this——

Q. No; I mean——

A. Are they braids?

Q. Yes.

A. No.

74 Q. Will you pick out one which looks like herringbone? [220]

A. This is a featherstitch pattern. That is where it originates from. This is the feather, this is the stitch, and the herringbone runs this way. This would be more like it. [Witness shows counsel a sample.] You see there. I believe that is where the name comes from—on account of the shape of a feather.

Q. As far as you know in your experience you sell these to cover up seams?

A. Yes, sir.

Q. You don't mean to testify as to what anybody else sells them for?

A. No, I could not do that. [221]

By Mr. WASHBURN:

Q. But during your somewhat extensive trade experience you have never sold them for any other purpose?

A. No.

By Mr. NICHOLS:

Q. Do you have a particular line of customers you deal with?

A. We sell to the notion trade. [222]

LEOPOLD BARUCH
vs. No. 4419.
THE UNITED STATES.

Hearing resumed April 13, 1907.

Present: Albert H. Washburn, Esq., for the importer; J. Osgood Nichols, Esq., asst. U. S. attorney, for the United States.

75 (Same stipulation as hereinbefore made as to [223] swearing witnesses by U. S. commissioner, receiving testimony, etc.)

HENRY H. LAHEY, called as a witness on behalf of the importer, being duly sworn, testified as follows:

By Mr. Washburn:

Q. Mr. Lahey, you are a member of what firm?

A. I. A. Lahey & Sons, 546 Broadway.

Q. Their business is——

A. Importing laces and kindred lines, white goods. [224]

Q. Handling braids also?

A. Yes.

Q. Pretty complete line?

A. Yes.

Q. Have you at my request produced here this morning representative samples of braids carried by your house?

A. Yes; I have them here [producing samples].

Mr. WASHBURN. I offer these samples in evidence.

(Same received in evidence and marked "Collectively Importer's Illustrative Exhibit H.")

Q. Do you know the uses to which these braïds are put? [225]

A. Yes.

Q. Tell us what those uses are?

A. Of course a braid is used principally for the manufacture of lace tidies, lace curtains; and the finer braids, Honiton braids, they use for the component parts of laces, used in making up designs to give lace effects. These "wave" samples are used principally
76 for panels and curtains; the coarser Renaissance braids are used almost exclusively for curtains, tidies, panels. [226]

Q. That is, to give lace effects?

A. To trim them up and give lace effects.

Q. I show you the official exhibits in the case at bar and ask you if you handle goods of that character?

A. No; I never handled any of these goods at all.

Q. And do you or do you not recognize them as braids?

A. Not handling them and not knowing their uses I couldn't say.

Q. At least they are not such braids as you as a braid man know? [227]

A. No; never handled such articles.

By Mr. NICHOLS:

Q. You don't know anything about featherstitch braids?

A. No, I do not; I never handled those at all in our line.

WILLIAM H. FARMER, called as a witness on behalf of the importer, being duly sworn, testified as follows:

By Mr. WASHBURN: [228]

Q. Mr. Farmer, what is your occupation?

A. I am a member of the Pratt & Farmer Company.

Q. What is their business?

A. They are wholesalers and importers of notions.

Q. Look at the official exhibits in this case and say whether you handle goods of that character?

A. We handle these [referring to Collective Exhibits A and B].

77 Q. Familiar with the uses of those goods? [229]

A. Yes, sir.

Q. What are they?

A. They are used entirely to cover the seams of children's dresses.

Q. As far as you are familiar with their use that is their chief use?

A. Yes; they are sold to manufacturers of children's dresses for that particular purpose; also sold to notion departments.

Q. Used to cover seams or bind seams?

A. Cover seams. They would be raw without them.

Q. Whether or not seam binding is a name for them? [230]

A. We frequently receive orders from our customers under the name of seam binding.

Q. Our featherstitch binding or herringbone binding also other names for them?

A. Yes, sir.
Q. All those names describe these goods, do they?
A. Yes, according to our trade.
Q. Trade usage?
A. Yes, sir.
Q. Would you say that the term binding would more narrowly describe the goods than any other term, more specifically? [231]
A. I should think so.
Q. You import these in wholesale quantities, do you?
A. Yes, sir.

Cross-examination by Mr. NICHOLS:

Q. How long have you been familiar with these so-called feather-stitched braids?
A. For about eight years; ever since 1898.
78 Q. What was your first connection with them? [232]
A. We have samples and orders for these in the wholesale trade.
Q. The first samples or orders you received in 1898?
A. Yes, sir.
Q. Before that you didn't know anything about them?
A. No, sir; before that we were not importing them.
Q. You wouldn't know how they were classed as far back as 1897?
A. We began in the spring of 1898.
Q. And you mean that the use to which they are [233] put as far as your personal experience is concerned is covering seams?
A. Yes, sir.
Q. You don't mean to say that other houses in the trade don't use them for other purposes?
A. As far as I know them they are used exclusively to cover seams of children's dresses; they are sold in large quantities to manufacturers of children's dresses, I mean small children.
Q. That is the use for them with which you are familiar, but you can't state they are not used for other purposes?
A. I never saw them used for any other purpose.
Q. Wouldn't they be used for trimming children's hats? [234]
A. No, they wouldn't be practicable for that in my judgment.
Q. You are positive they are never used to cover seams on babies' hats, for instance?
A. I think not; I have never seen them! I have four small children.
Q. As a matter of fact your trade experience limits you to
79 this particular use, your own personal knowledge; you don't pretend to say that [235] there may not be other uses outside of your experience?
A. Of course, I try to find every customer I can for this article and search the trade; and the only thing we can find is the manufacturers and jobbers which in turn sell them to department stores, and this braid here is sold in the notion departments and for that particular purpose.

Q. Do you know what they are used for when they are sold over the counter?

A. They ask for them for that particular purpose, to use on children's dresses.

Q. Do you mean to say that everybody that comes and asks for them tells what they are going to do with them? [236]

A. Not always; they frequently, almost always, ask for something for children's dresses, otherwise they would not be sold in this department, notion department.

Q. What I mean is you have knowledge that these featherstitch braids are used for one purpose?

A. Yes.

Q. But you don't mean to say they are not adapted for possible use in other purposes?

A. I don't think they are adapted for any other purpose that I know of. [237]

Q. Do you know of any reason why these featherstitched braids couldn't be used for decorating children's dresses or for other purposes besides being put over seams?

A. I am a manufacturer of those things, but I can't see why they should be, because they are narrow braids particularly adapted for covering seams; they are always flat, not thick, always flat in their weave, and adapted for that purpose; if they were thick they couldn't be ironed; they are [238] always used in wash dresses, not in cloth dresses.

Q. That is the reason why they are adapted for that purpose. I ask if you know of any reason why they couldn't be adapted for any other ornamental purpose; they are highly ornamental, some of them, in the nature of trimmings. You don't mean to tell me that they aren't used as trimmings to some extent?

A. I won't say they are not; but I have never seen them.

Redirect examination by Mr. WASHBURN:

Q. When you testified as to the uses of these [239] goods, when Government counsel referred to your personal experience you meant, I assume, your trade experience?

A. Yes, sir.

Q. Now, I direct your attention to illustrative Exhibit G here; it would appear that articles of this character are used to cover seams there, would it not?

A. Yes, sir.

Q. But you have sold them to customers——?

A. We have sold some to customers—not hats, no, but for dresses.

JAMES CANAVAN called as a witness on [240] behalf of the importer, being duly sworn, testified as follows:

By Mr. WASHBURN:

Q. What is your occupation, Mr. Canavan?

A. Importers of straw goods.

Q. Among other things do you handle straw braids?

A. Yes.

81 Q. You handle braids for hats, do you? [241]

A. We do.

Q. Have you produced at my request a representative list of samples of braids for hats?

A. Yes [producing samples].

Mr. WASHBURN. I offer these in evidence.

(Same received and marked "Importer's Illustrative Exhibit I.")

Q. Those are among the class of articles which you know as braids?

A. Yes, sir.

Q. From your extensive experience in the hat business? [242]

A. Yes, sir.

Q. Look at the official exhibits in suit; do you handle these at all?

A. No.

Cross-examination by Mr. NICHOLS:

Q. There is a great variety of articles known as braids, is there not, of a great variety of materials?

A. Yes, sir.

Q. And a great difference in width and pattern?

A. Yes.

Q. And purpose for which they are applied?

A. Well, we sell to the manufacturers of hats.

Q. That is, your experience is solely limited [243] to braids used in hats?

A. With the exception of a small amount of straw braids that we sold to basket makers.

Q. You don't know anything about braids that are used for the purpose of ornamenting women's dresses?

A. No.

Q. Did you ever handle featherstitch braids?

A. No.

82 Q. Are you familiar with them in the trade at all? [244]

A. I have heard of such braids called featherstitch.

Q. They are very different from this kind of hat braids?

A. Yes, sir.

Q. Always been known as featherstitch braids?

By Mr. WASHBURN:

Q. You don't deal in these?

A. We don't deal in these.

By Mr. NICHOLS:

Q. You have heard of them, that is all? [245]

A. I have heard of featherstitch braids.

By Mr. WASHBURN:

Q. Referring to the braids with which you are familiar, are they braids which are made on a braiding machine, braided goods chiefly?

A. I should say so, chiefly.

LEOPOLD BARUCH
vs.
THE UNITED STATES. } No. 4419. [246]

Hearing resumed April 18, 1907.

Present: Albert H. Washburn, Esq., for importer; J. Osgood Nichols, Esq., asst. U. S. attorney, for the United States.

(Same stipulation as hereinbefore made as to swearing witnesses by U. S. commissioner, receiving testimony, etc.)

83 LOUIS LEWIT, called as a witness on behalf of [247] the importer, being duly sworn testified as follows:

By Mr. WASHBURN:

Q. Mr. Lewit, what is your business?

A. Manufacturer of baby dresses.

Q. Where?

A. 119 Bleecker Street.

Q. How long have you been engaged in that business?

A. In that business three and one-half years in this firm.

Q. And before that?

A. I have been all my life in the manufacturing line. [248]

Q. You mean manufacturing babies' dresses?

A. Babies' dresses and underwear and similar wear for small folks.

Q. Referring to so-called featherstitch goods, like the exhibits here in suit which you have examined, will you tell us whether you are familiar with goods of that character?

A. I am; I use considerable.

Q. Do you use them in large quantities?

A. Yes, sir.

Q. Been familiar with them for a good many years, have you? [249]

A. Yes.

Q. Will you tell us for what purpose they are used?

A. I use them to cover the seams around the yokes on babies' dresses, finish off the seams here of the sleeve and around the neck, the yoke.

Q. Look at this illustrative Exhibit D.

A. Yes. Featheredge or banding, herringbone.

Q. Those are some of the names?

84 A. Some of the names that we know them by; [250] the girls that handle them call them by those names.

Q. Are they regarded as trimmings ever?

A. Not that I know of. Simply put a better finish on them.

Q. Do you use trimmings yourself?

A. Yes.

Q. And familiar with trimmings?

A. Our goods are nothing but trimmings.

Q. What materials do you use for trimmings?

A. Embroideries, narrow embroidery, edges, insertions, Val. laces—German and English and French, wherever they come from, some are made now in this country. [251]

Q. Those are all trimmings?

A. Yes.

Q. And used for trimmings?

A. And used for trimmings.

Q. But emphatically these (referring to so-called featherstitch goods) are not?

A. Not to my knowledge. Here are some goods that are trimmings that we trim dresses with [producing samples]. I am just buying a lot of this stuff now.

Mr. WASHBURN. I offer these in evidence as illustrative exhibits of trimmings, such as this witness uses and is familiar with. [252]

(Same received and marked "Importer's Illustrative Exhibit K.")

Q. But the underwear or dress trade, would they in your opinion regard these featherstitch goods as bindings?

A. Bindings or finishing strips; generally come in spools; never known as a trimming at all; in fact we order them by "featherstitch," that is the name that we know them by.

85 Q. Sometimes order them as herringbone? [253]

A. Herringbone or featherstitch.

By Mr. NICHOLS:

Q. Featherstitch braids?

A. No braids. There is no braid there; simply call them either a binding or featherstitch, number so and so, No. 5397 or whatever it may be.

By Mr. WASHBURN:

Q. Those are all trade names which are used in your business in ordering these goods?

A. Yes, sir.

Cross-examination by Mr. NICHOLS: [254]

Q. You say that the only purpose for which you use these featherstitches, as you call them, is to cover seams?

A. To cover seams.

Q. What kind of goods do you manufacture?

A. White baby dresses.

Q. And you don't manufacture anything else?

A. No, sir; anything to make the baby dresses.

Q. And you have certain patterns like the illustrative Exhibit D?

A. Yes, sir.

Q. You don't pretend to testify as to how anybody else would use these articles? [255]

A. I don't know anything what anybody else does.

Redirect examination by Mr. WASHBURN:

Q. But you have had a somewhat extensive experience in the business?

A. Extensive experience.
Q. During how many years?
A. Twenty-five years.
86 Q. And during that time you have been familiar [256] with these goods?
A. Yes, sir.
Q. And you have never known them to be used as trimmings?
A. No, sir.
Q. And during your business experience you have manufactured other goods than babies' dresses, have you not?
A. Yes.
Q. In which you used the featherstitch goods?
A. This class of goods [pointing to Exhibit A].

By Mr. NICHOLS:

Q. You call them featherstitches? [257]
A. Featherstitches and bindings; most of the girls in the factory call them bindings; they simply call for a number.
Q. Do you consider that these featherstitches ornament your goods?
A. They do somewhat; they show up better than the plain. In a good many cases we only use the plain.

By Mr. WASHBURN:

Q. Same purpose?
A. Some purpose.
Q. Like illustrative Exhibit E, for example? [258]
A. Exactly; in the same place and for the same purpose.
Q. Is the difference in price between the two kinds of goods, such as are used in Exhibits D and E, considerable, or do they cost about the same?
A. Exhibit D costs more.
Q. You say a little more?
A. Yes.
Q. Not a very large difference in price?
87 A. The featherstitch costs about ten or fifteen per cent more, twenty per cent more. [259]
Q. And an order for bindings by you, or from you to dealers to supply you with goods, would be fulfilled, would it, by delivery of goods of this character, these featherstitch goods?
A. Yes, sir.

ISAAC ALVIS, called as a witness on behalf of the importer, being duly sworn, testified as follows:

By Mr. WASHBURN:

Q. What is your business, Mr. Alvis? [260]
A. My business is ladies' underwear and shirt waists.
Q. Manufacturer of such goods?
A. Manufacturer.

Q. Where is your place of business?

A. 114 to 118 West 17th; the firm of H. S. Biscoe & Co. I am in this line since 1883.

Q. Manufacturing of goods of this character?

A. I have even manufactured infants' wear some years ago; not for the last seven or eight years.

Q. You are a manufacturer of goods of this character? [261]

A. All my life.

Q. Referring to the official exhibits which you have examined, have you had occasion or do you use these so-called featherstitch goods?

A. We have always called them herringbone; never knew them by any other name for years.

Q. Just the name herringbone?

A. Yes. That is the only thing we ever use them for, on garments like this night robe there [indicating one of illustrative exhibits.]

88 Q. For what purpose is that used? [262]

A. To cover the seams; to make them more presentable than the banding is.

By M. NICHOLS:

Q. The main purpose is ornamental?

A. The main purpose is ornamental; just to make it more presentable.

By Mr. WASHBURN:

Q. Referring to this, which is the main purpose, to cover the seam or its ornamental purpose?

A. To cover the seams; to make it more presentable. We charge exactly the same price for the garment whether it is on or whether it it not on. [263]

Q. Whether the featherstitch is on or not. But the herringbone imparts a finish to it?

A. The herringbone imparts a finish to the garment.

Q. But its main object is to cover the seam?

A. Decidedly so.

Q. Now, referring to trimmings, do you use trimmings?

A. We use embroideries, laces of all descriptions. Those (referring to so-called featherstitch goods) are on underwear garments and not shirt waists. [264]

Q. Are goods of this character that you know as herringbone only regarded as trimmings?

A. No; never use them as trimmings; just simply use them for that one purpose; use them on very few garments.

Mr. WASHBURN. I offer that garment in evidence.

(Same received and marked "Illustrative Exhibit L.")

89 Q. Would an order for seam bindings or herringbone bindings be filled by the delivery of [265] goods of this character (referring to official exhibits)?

A. Certainly.

Cross-examination by Mr. NICHOLS:

Q. You have never known them in twenty-four years by any other name than herringbone?

A. I have heard the expression featherstitching. We have always carried them under the name of herringbone.

Q. You don't know particularly how others in the trade call them? [266]

A. I do not. We have ordered them for years and always under that same name.

Q. You don't know for what other purposes they may be used besides covering seams?

A. I have never seen them used for any other purpose; I have traveled a good deal myself; I have never seen them used for any other purpose.

Q. That is all you use them for?

A. That is all I use them for.

Q. And on a single garment?

A. We use them on different garments for the same purpose.

Q. You only make night gowns?

A. We make night gowns; we make ladies' [267] chemises; we use them on corset covers.

Q. You don't mean to testify as to how they may be used on other things?

A. How anybody else might use them?

Q. Yes.

A. I don't know how anybody else uses them. I have never seen them used for any other purpose.

Q. Would you expect to get that article by ordering herringbone braid?

A. We order so many gross of herringbone.

90 Q. You don't use any other word? [268]

A. No other word is used; we never use any other word than that; and I have ordered them in very big quantities.

Q. If you ordered them as featherstitch would you expect to be understood?

A. Most certainly I would, as I know what the featherstitch is just as well; but herringbone is the name we have always used all these years.

Q. One firm would use one name and another firm another?

A. Yes.

Q. It depends on the purpose for which they use them? [269]

A. That I don't know. We have always used that one name for them.

Redirect examination by Mr. WASHBURN:

Q. You come somewhat extensively in contact with the trade in buying these articles?

A. Oh, yes.

Q. And have heard them referred to and described? They have been mentioned a great deal in your business experience?

A. Yes.

Q. And herringbone is the name for them?

A. Any salesman that ever comes in to see us, they ask me if I want to buy herringbone. [270]

Q. And you buy from different sources, do you?

A. Yes; from a great many different sources.

Q. Could you tell us how many years of experience you have had in these?

A. Since 1883.

Q. During that time you have seen these articles and encountered them in the trade a great deal?

A. Yes.

91 Q. And other designs and other makes besides these that you used? [271]

A. Yes.

Q. Where this herringbone article is employed?

A. Yes; every manufacturer employs them.

Q. So far as your observation goes is it correct to say that the practically exclusive use of this herringbone has been for covering seams?

A. For the same purpose; every manufacturer in the United States has used it and is using it to-day.

Recross examination by Mr. NICHOLS:

Q. You don't mean to and you don't pretend to speak for the other people that used it? [272]

A. I know they are using it, because I have seen it.

Q. But you don't know in every case what they are using it for?

A. No, not in every case.

Q. There are different ways of designing these night gowns?

A. Yes, sir.

Q. And you don't infer that they always use these articles to cover seams, do you?

A. I have never seen them used for any other purpose.

Q. Now, referring to collective Exhibit C, is that what you call herringbone? [273]

A. No, sir.

Q. Any of these articles in collective Exhibit C which are known as herringbone?

A. No, sir.

Q. What would you call those—braids?

A. I have never used anything like these; these I would call a trimming; these are not for covering seams; these are for making things fancy.

92 Q. How about this little one? [274]

A. That is an edging. This class of merchandise I have never used. We have used only the herringbone stuff.

Q. How much of the articles in collective Exhibit B would you call herringbone?

A. These might be used for different purposes; goods with colors running through them may be used more on infants' wear; they wouldn't be used on underwear at all; these could be used for a trimming.

Q. That is, referring to these articles in collective Exhibit B?

A. Yes; these could be used for a trimming. [275]

Q. As a matter of fact when you referred to herringbone didn't you mean simply the little narrow braid?

A. With a straight edge to it, to be used as a binding and nothing else.

Q. You mean such as are on the night gown?

A. Yes. As soon as they get the scalloped edge on there they can't be used for that purpose; they can be used, but it wouldn't look nice.

Q. Showing you this collective Exhibit A, which of these would you describe as herringbone?

A. That is the only thing that any of these can be used for.

Q. What? [276]

A. To cover a seam as a banding. These are not trimmings by any means.

Q. I was asking you which of them you would call featherstitch?

A. I call all these; these are the ones that I am familiar with.

Q. The kind that you use are like a fish's backbone?

A. Yes; these are the herringbone.

93 Q. Except the one with the dots? [277]

A. That is a herringbone also.

Q. So your testimony relates only to this collective Exhibit A?

A. Yes. The others I don't know anything about.

Adjourned.

LEOPOLD BARUCH
vs.
THE UNITED STATES. } No. 4419. [278]

Hearing resumed April 19, 1907.

Present: Albert H. Washburn, Esq., for the importer, J. Osgood Nichols, Esq., assistant U. S. attorney, for the United States.

(Same stipulation as to swearing witnesses by U. S. commissioner.)

ALFRED [illegible]NTL, called as a witness on behalf of the importer, being duly sworn, testified as follows: [279]

By Mr. WASHBURN:

Q. Mr. Fantl, with what concern are you connected?

A. The firm of Lesser & Fantl.

Q. In what business are you engaged?

A. Resident buyers.

Q. Of various kinds of merchandise?

A. Resident buyers for department stores and different concerns.

94 Q. How long have you been engaged in that business? [280]
A. Eighteen years.
Q. Buying in wholesale quantities?
A. Yes, sir.
Q. You have had an extensive buying experience, have you?
A. Yes, sir.
Q. Referring to the official exhibits in this case, A, B, and C, which you have examined, have you dealt in articles of that character at wholesale during your business experience?
A. All the time.
Q. Referring especially to collective Exhibit A, the plain edge goods, under what name have you dealt in them? [281]
A. Seam banding, seam covering, and also termed in Germany featherstitch braid.
Q. Herringbone another name for them?
A. Herringbone is another name for them.
Q. And herringbone binding and featherstitch binding?
A. Yes; seam binding, seam covering.
Q. What is their chief use so far as you know?
A. Covering the seams of underwear and infants' wear. It has been tried to be forced as a trimming, but it was a failure.
Q. It is not a trimming, according to your experience? [282]
A. No.

Cross-examination by Mr. NICHOLS:

Q. To what trade do you sell?
A. I do not sell; I buy for department stores.
Q. Your experience is confined to buying?
A. To buying for department stores.
Q. For what department stores?
95 A. Department stores of all sizes and of different towns, like Los Angeles, El Paso, Salt Lake City; all over the country. [283]
Q. Does your testimony relate to these articles known as collective Exhibit C?
A. My testimony relates to this article here (referring to collective Exhibit A).
Q. You know what these (Exhibit A) are used for?
A. Yes; buying them every day.
Q. You buy them; you don't manufacture anything you deal in?
A. I do not manufacture. As a buyer I have got to know what they are used for and what they are. Being a resident man I conducted the sales for them in that particular line. [284]
Q. I am not talking of the fact; all you know is that these articles are in demand in department stores; there is where your business ends as far as it has any——
A. It can't end there.
Q. I am not asking you what your knowledge is. That is where your business connection ends? You do not sell?

A. I buy for department stores; we do not sell any merchandise.
Q. You buy for department stores?
A. Yes. [285]
Q. Did you ever buy it for a manufacturer?
A. Yes—I buy it from a manufacturer, but not for a manufacturer.
Q. Then you have never bought any of these goods for the people who use them?
A. Sometimes some department stores are using them for manufacturing purposes, in their infants' department; it all depends what location the department store is.
96 Q. Do you recall any department store that uses them for that purpose? [286]
A. In my experience I do know of two instances where they have been used.
Q. You remember which ones those were?
A. That is a good many years ago; it was down South in one case; used on infants' caps covering seams.
Q. Then your knowledge about its use for covering seams is limited to those instances?
A. My exact knowledge. When we buy an article we have to be well posted as to what it is used for and where it is used. Seam binding, for covering seams, and herringbone—that is what it is termed. [287]
Q. You don't mean to testify that these articles are never used for any other purpose than for covering seams?
A. I am testifying to what I am buying it for myself. If anybody wants to use it for a trimming—it has been a failure as a trimming—it has never been used to my knowledge.
Q. You are under the impression that as far as you have knowledge it is used for covering seams?
Mr. WASHBURN. I object to the word "impression."
Q. Did you ever see it used for covering seams? [288]
A. Decidedly.
Q. Where?
A. In the merchandise I have purchased, like infants' wear.
Q. I am asking you if you ever saw it used for that purpose?
A. I am not in a factory; I am a buyer; I am not in a factory; when I buy the merchandise I see it used on merchandise.
97 Q. I ask you where you ever saw it used, put on these seams? [289]
A. I am not a manufacturer; I have never seen it used that way.

By Mr. WASHBURN:

Q. But you have a great many articles where it was used for covering seams?
A. I have.
Q. You have encountered those in your trade experience?
A. Yes.

Q. Referring to your extensive experience throughout the country, an order for herringbone binding or featherstitch binding, from Los Angeles or Salt Lake City or El Paso, would be filled by the delivery of goods of this character? [290]

A. Of this character.

By Mr. NICHOLS:

Q. Would the order be filled if it was featherstitch?

A. Also, yes; name from Germany that way, it would be filled.

Q. Known under various names in the trade?

A. The way we term it is seam binding, herringbone.

By Mr. WASHBURN: [291]

Q. Those are the chief names?

A. Those are the chief names. I handled these goods in Europe, and the same terms, probably called in English featherstitch braids.

By Mr. NICHOLS:

Q. Did you buy in 1897?

A. Yes, I have bought some.

Q. What were they known as then—braids?

98 A. I don't know exactly what they were designated. [292]

Q. You don't remember anything about the name in 1897?

A. No, I do not.

By Mr. WASHBURN:

Q. But during the last eighteen years you have been familiar with these goods?

A. I have not been buying anything else but similar merchandise.

Q. And during all that time an order for herringbone or featherstitch binding would have been filled by the delivery of goods of this character? [293]

A. Yes; to-day also.

By Mr. NICHOLS:

Q. From your knowledge derived from your extensive experience all over the country, can you tell me yes or no whether a plain strip without the ornamentation would cover the seam as well as these articles?

A. The plain will cover the same.

By Mr. WASHBURN:

Q. Do you happen to know whether the white goods preponderate over the colored goods?

A. White is preferable. [294]

Q. But there is more of those handled in the trade?

A. More than the colors.

Q. More imported and more sold?

A. More imported and more sold.

Adjourned.

99

LEOPOLD BARUCH
vs.
THE UNITED STATES } No. 4419. [295]

Hearing resumed April 24, 1907.

Present: Albert H. Washburn, Esq., for the importer; J. Osgood Nichols, Esq., assistant U. S. attorney, for the United States.

(Same stipulation as hereinbefore made as to witnesses being sworn by U. S. Commissioner, etc.) [296]

DOROTHY FARRELL, called as a witness on behalf of the United States, being duly sworn, testified as follows:

By Mr. NICHOLS:

Q. In what business are you engaged, Miss Farrell?

A. I am buyer of small wares, buyer of notions, with Aiken, Son & Co.

Q. Have you in connection with that business become familiar with the subject of braids? [297]

A. Yes.

Q. Do you buy articles known in the trade as featherstitch braids?

A. Yes.

Q. How long have you been familiar with featherstitch braids? (No answer.)

Q. Were you in 1897?

A. Yes. I wouldn't like to say how long. This is featherstitch braid; that is the only name I know it by (referring to collective Exhibit A).

100 Q. And I show you collective Exhibit B? [298]

A. Featherstitch braid.

Q. Referring to collective Exhibit C——?

A. These are cotton trimmings or cotton braids.

Q. Are these known either as braids or trimmings?

A. Braids or trimmings, just the same; braid is used for a trimming; it is braid, cotton braid.

Q. Do you know for what purpose articles similar to these in collective Exhibit A are used?

A. Well, they use them over seams; and they use them for trimming; they are used flat on seams—they are not used as a binding; they are used flat. [299]

Q. What is the difference between binding and braid?

A. You take and put your binding right over the seam like that [indicating]; binding is used double; you take this seam between that and there and that is sewed like that [illustrating].

Q. You mean folding the braid over the edge of the article to be bound—would that describe it?

A. Yes.

Q. Does it make any difference whether it is used to cover a seam or for any other purpose as to its name by which known in the trade?

A. Featherstitch braid; it is known only as featherstitch braid. [300]

Q. You never heard it called anything else.

Q. How extensively have you been handling that article?

A. We sell at retail, you know; I buy it from the wholesale people and sell at retail; we don't sell an awful lot of that braid.

Q. You buy it from different wholesalers?

A. Different importers; yes.

101 Cross-examination by Mr. WASHBURN: [301]

Q. Miss Farrell, were you engaged in buying these so-called featherstitch braids in 1897—were you the buyer at that time for Aitken, Son & Co.?

A. I have been buying for five years; but I have had charge of this department for a number of years.

You have been buying these goods for about five years?

A. I really could say I have been buying for a number of years, because I did all the selecting of these goods.

Q. But you have been the buyer for about five years? [302]

A. Five or six years.

Q. In 1897 were you with Aitken, Son & Co.?

A. Yes; I was.

Q. What were your duties at that time?

A. I had charge of the department; that is, I assisted the buyer; I selected the trimmings with the buyer.

Q. These goods are with you a relatively insignificant part of your business are they not?

A. Yes, they are. They use them for babies' wear and undergarments and all that sort of thing.

Q. Babies' wear, undergarments, and covering seams?

A. Covering seams, yes. [303]

Q. Isn't it true, Miss Farrell, that the method of binding seams which you recently described, that is——

A. Folded in.

Q. Folded in—is more or less obsolete now?

A. You would never use these bindings that way. We sell lots of bindings for seams; we have seam bindings.

Q. But these are used for covering seams?

102 A. These are used for covering seams. [304]

Q. And binding seams in that sense?

A. You couldn't use them for binding seams; used to cover the seams.

Q. But the object is partly to cover the seam?

A. Used for a trimming, to cover the seam, just for a finish.

Q. And some of the plain goods are used for covering seams, are they?

A. Yes. There are plain ribbons used for seam bindings.

Q. Referring to Exhibit E, that is used to cover the seam?

A. That is sewed on there. [305]

Q. It is used to cover the seams?

A. In that case it is.

Q. And just in the same sense that these so-called featherstitch braids are used to cover the seam in Exhibit D, is it not?

A. That covers the seam and form a trimming. This is just the plain material (referring to article on Exhibit E).

Q. But the object is the same, to cover the seam in both instances?

A. Yes.

Q. These goods sometimes known as herringbone?

A. Yes; you could call it herringbone; that is a herringbone stitch. [306]

Q. That is the name under which you would recognize them?

A. Yes; but featherstitch is the name for it; very few call them herringbone; it is sold under the name of featherstitch; I could have brought you down a big sample card of these, all featherstitch, featherstitch braids.

Q. But herringbone is another name for them?

A. Herringbone is a stitch, a pattern.

103 Q. I suppose the chief use of these goods is to [307] cover these seams, in the way you have described, so far as you are familiar with these goods?

A. Yes; it covers the seam.

Redirect examination by Mr. NICHOLS:

Q. The chief use is to decorate the article?

A. Yes; it decorates and it covers the seam too, because the seam is there.

Q. They are often used in other ways than to cover seams?

A. Yes; it is often used for a trimming.

Q. Is a binding an entirely different thing?

A. It is a plain binding. You know what cotton tapes are; they are bindings. [308]

Q. Would you call any of these exhibits I have shown you (referring to collective Exhibits A, B, and C) bindings?

A. I wouldn't call these bindings; no, not any of them.

Q. They are not known in the trade as bindings?

A. No; not as bindings.

Recross examination by Mr. WASHBURN:

Q. Referring now to illustrative Exhibit E, wouldn't you call that a binding?

A. It covers the seam. I call it binding when it is like this [illustrating], bound right over the [309] seam, then you put your binding right over there [illustrating].

Q. From your point of view nothing which covers a seam on the outside is a binding?

A. No; I wouldn't call it a binding.

Q. Referring to the uses of Exhibit B, are you familiar with those, too?

A. Yes; they are all featherstitch braids.

Q. Referring to their uses, I mean?

104 A. They are used for the same thing. They [310] wear those on undergarments; gentlemen's undergarments——

Q. Covering seams, too?

A. Yes; covering seams.

By Mr. NICHOLS:

Q. You couldn't double one of these articles over a seam and use it as a binding?

A. No; you couldn't use it as a binding; it would be clumsy. That is meant for a decoration—trimming; it is too clumsy for a binding.

Q. And often trimmings are put over seams?

A. Trimmings are often put over seams.

By Mr. WASHBURN: [311]

Q. What bindings do you carry?

A. We carry tape bindings; we carry silk braids, bindings, and seam bindings. They would be cotton.

Q. And all those things are used on the inside of garments?

A. Yes; on the inside of garments. That is a trimming, that is used as a trimming (referring to collective Exhibit B).

JOHN T. WILSON, called as a witness on behalf of the United States, being duly sworn, testified as follows: [312]

By Mr. NICHOLS:

Q. You are in the dry goods business?

A. Yes, sir.

Q. And how long have you been familiar with featherstitch braids?

A. Twenty-one years.

105 Q. Now, showing you these articles, collective [313] Exhibits A, B, and C, were you familiar with goods of that character back in 1897?

A. Been buying these (Exhibits A and B) for eighteen years. These (Exhibit C) are not in my department.

Q. And you were familiar in 1897 with the name which attached to them in the trade?

A. Yes, sir.

Q. By which they were bought and sold?

A. Yes, sir.

Q. Did you buy or did you sell similar articles?

A. I have been buying them.

Q. For what houses? [314]

A. B. Altman & Company.

Q. And do you deal all over the country?

A. We sell retail in New York City. We send goods all over the world.

Q. Your familiarity includes the use of the term throughout the country?

A. It certainly should.

Q. What do you call these articles, A and B?

A. These are known as featherstitch braids; also as herringbone trimming (referring to Exhibit A).

Q. The same thing true of Exhibit B?

A. No; those are more trimming braids than these in Exhibit A.

Q. They are all known as braids? [315]

A. They are all braids; yes, sir.

By Mr. WASHBURN:

Q. Exhibit B are more trimming braids than Exhibit A?

A. Yes; they are more trimming braids than Exhibit A; they run wider; they are a little different class of goods.

106 By Mr. NICHOLS: [316]

Q. You call them trimmings?

A. They are cotton trimming braids—known so in our store. When I am shown these (Exhibit B) I know the character of the goods, although I don't buy these wider goods; they go in a separate department; these are cotton trimming braids.

Q. Known in the trade as featherstitch braids?

A. These are (referring to Exhibit A); I can only speak positively on the goods I carry; these featherstitch braids are in the notion department. These others (Exhibit B) are not in the notion department; they are in the braid department. [317]

Q. You are limiting your testimony to Exhibit A?

A. Yes, sir.

Q. Are you sufficiently familiar with these articles, Exhibit B, to know whether they are known as trimmings?

A. I am, because wherever I am buying these goods (Exhibit A) this Exhibit B is shown with them.

Q. And they are both known as trimmings?

A. The reason I don't carry these in my department (referring to Exhibit B) is because they are trimmings—trimming braids; they go in the trimming department; braids go in with the trimmings, because they are trimmings. [318]

Q. I understand the only reason you don't carry this Exhibit B with the featherstitch braids, with Exhibit A, is because this collective Exhibit B are handled as trimmings?

A. They are trimmings, both these (referring to Exhibits B and C).

Q. Are you familiar with the uses to which those articles in Exhibit A are put?

107 A. Yes, sir. They are used as a trimming over [319] the seams, generally on children's dresses, on account of being so narrow.

Q. Is the general object decorative?

A. That is the principal object, or they wouldn't have the fancy work on them.

Q. They are not always put over the seams, are they?

A. As far as I know; of course I don't do any sewing; as we sell them they are used for that purpose.

By Mr. WASHBURN:

Q. For covering seams or binding seams? [320]

A. For trimming. They are featherstitch braids, used for trimmings and used over the seams.

Q. Seam coverings, aren't they?

A. Yes.

By Mr. NICHOLS:

Q. How are they ordered?

A. Featherstitch braids.

Q. When you have said seam coverings you only described their use?

A. Their use; they are put over the seams, on account of the fancy work on them; that makes them the trimming.

Q. Could you use any of them as binding? [321]

A. No, sir.

Q. They are never called bindings?

A. No, sir.

Q. Are you familiar with what are known in the trade as bindings?

A. I buy them.

Q. You mean bindings are something entirely distinct from these exhibits?

A. Yes, sir.

108 Cross-examination by Mr. WASHBURN: [322]

Q. Mr. Wilson, you are buyer for the notion department, as I understand?

A. Yes.

Q. And you don't carry trimmings in the notion department, do you?

A. No, sir.

Q. The only sense therefore in which an article like Exhibit A can be called a trimming is that it imparts an incidental finish to the garment when it is used in covering seams. That is so, isn't it?

A. I should judge so; yes; as far as I know.

Q. And the chief use is in covering seams so far as you have had any knowledge of the use? [323]

A. I know it is used for covering the seams.

Q. That is its chief use?

A. That is all I know about. I have sold it as featherstitch braids.

Q. That is the only use that you are familiar with?

A. Yes.

Q. Would you recognize that article under the name of herringbone?

A. Yes, sir; herringbone trimmings, the other name for it—featherstitch braids and herringbone trimming.

Q. Sometimes known as herringbone only? [324]

A. Not to my knowledge; no, sir.

Q. Is that a large item with you?

A. We carry a full line of the goods; yes, sir.
Q. For retail purposes?
A. Yes, sir.
Q. And your business experience with the article has been confined to buying it for retail purposes, has it?
A. Yes, sir.
109 Q. And when you say that you are familiar with [325] the business all over the country you do not mean that you sell this article all over the country?
A. Our business extends all over the world; yes, sir.
Q. But you sell this article at retail?
A. Yes, sir.
Q. Do you sell anything at wholesale?
A. Not these goods; no, sir.
Q. Do you sell anything at retail?
A. Our house does.
Q. So that you can't say that the business of this house in these goods extends over the country?
A. Further than orders coming into the house by mail. [326]
Q. That is all?
A. That is all.
Q. Speaking in a trade sense you would not regard that article, Exhibit A, as included in the class of articles which your house sells as trimmings, would you?
A. I would consider it a trimming article; yes, sir.
Q. Now, speaking in a trade sense, that is not the article which your house carries as a trimming and sells as a trimming, is it?
A. I don't see any other name for it except trimming braids. [327]
Mr. WASHBURN. I move to strike out that answer as not responsive.
Q. That article is not carried in your trimming department?
A. No, sir.
Q. And it is not the class of articles which you handle as trimmings?
A. Not as the house, taking the separate departments; no sir.
110 Redirect examination by Mr. NICHOLS: [328]
Q. You are referring only to the division of business among the departments of your house?
A. Yes.
Q. You are not referring to what the trade knows as trimmings or braids?
A. No, sir.
Q. As a matter of fact is that (referring to Exhibit A) most generally known in the trade as featherstitch braid?
A. That is the proper name for it; yes, sir.
Q. And it is also known to some extent as a trimming?
A. It is used for that purpose. [329]
Q. There are various kinds of trimmings?

A. Yes, sir.
Q. And braid is one kind?
A. Yes, sir.

Recross-examination by Mr. WASHBURN:

Q. But the only thing that you buy for your house is articles that you carry in the notion department?
A. That is all.
Q. You don't buy the trimmings?
A. No.
Q. And have not had any commercial experience with them? [330]
A. No, sir.

KATE FORSYTHE, called as a witness on behalf of the United States, being duly sworn, testified as follows:

By Mr. NICHOLS:

Q. Miss Forsythe, are you engaged in the dry goods business?
A. I am.
111 Q. Have you become familiar in your experience [331] with what is known in the trade as featherstitch braids?
A. Yes.
Q. And have you bought them?
A. Yes.
Q. For what house?
A. For James McCreery & Company.
Q. Were you familiar with featherstitch braids in 1897?
A. Yes, sir.
Q. And showing you these exhibits, which are the merchandise involved in this case, Exhibits A, B, and C, are those materials that you have known in the trade as featherstitched braids? [332]
A. Yes, these (referring to Exhibits A and B). We would call this cotton trimming (referring to Exhibit C). These are both featherstitch braids (referring to Exhibits A and B).
Q. Can they be used as bindings?
A. No, sir.
Q. Are you familiar with what is known in the trade as bindings?
A. Yes.
Q. Are they an entirely distinct class of goods?
A. Yes; entirely.
Q. Would the fact that these Exhibits A and B are sometimes used to cover seams, would that make them bindings in any sense? [333]
A. No; they couldn't be used as a binding; they are used as a finish; the narrow ones are used as a finish, where they join a seam together, like this here (indicating).

By Mr. WASHBURN:

Q. That covers the seam?
A. It covers the seam.

112 By Mr. NICHOLS:

Q. You mean it covers the seam——

A. As a general thing it is a finish to a garment, where you couldn't make a good finish without this featherstitch braid.

Q. It might be and it is used to some extent apart from a seam?

A. Very seldom.

Q. And the chief purpose is decorative, I suppose?

A. It is a finish, that is all it is; it is a finish.

Q. I mean the finish is something which adds to its ornamentation?

A. You couldn't leave the raw seam; you would have to use something to finish the garment. [335]

Q. Embellishes the garment?

A. Simply got to have that or there will be a frayed edge which would look very badly.

Q. Is a binding something which is used by folding over the edge?

A. Yes, a binding is.

Q. And not laid flat to cover——

A. Sometimes a bone casing that you put on—that is, flat, of course—a bone casing is a different thing from this (Exhibit A); that covers the inside of a garment.

Q. Bindings in general are folded over?

A. Yes; a binding is put on in this way [336] [illustrating by folding or doubling a sample in Exhibit A].

Q. You have bought these articles under the name——

A. Featherstitch braids.

Q. And in ordering them——

A. Order them as featherstitch braids.

Q. And nothing else?

A. And nothing else.

113 Q. This line of goods here (referring to Exhibit C)—— [337]

A. This is a different thing from that (Exhibit A); this (Exhibit C) is more of a trimming than that is (Exhibit A).

Cross-examination by Mr. WASHBURN:

Q. The wider goods in Exhibit C are more a trimming than the narrow ones?

A. Yes, sir; you couldn't call these all the same thing.

Q. The wide ones you would regard as trimmings?

A. More as a trimming, but wouldn't want to carry them in our trimming department; we would carry them in the braid department. [358]

Q. And the narrow ones?

A. In the notion department. We have three distinct departments for those things. Those would be strictly a notion.

Q. The narrow ones would be in the notion department?

A. Yes.

Q. And what is the third department?

A. That is the trimming department, in which we carry a higher class of goods than these (referring to Exhibit C); we don't carry in that department anything as ordinary as that. [339]

Q. I understand you to say you had three departments, a notion department and a trimming department, and what was the other—a braid department?

A. We include the braids with our notion department, but then it is really a separate department, too.

Q. When you speak about the braids you mean what?

114 A. We include that in our notions. In some of [340] the houses they carry it in the trimming department and in other houses they carry it in the notion department.

By Mr. NICHOLS:

Q. It is all according to how the house happens to arrange its departments?

A. Yes.

By Mr. WASHBURN:

Q. Were you buying for James McCreery & Company in 1897?

A. Yes.

Q. These same goods? [341]

A. Yes.

Q. Is that a retail house?

A. Yes.

Q. You sell these things at retail?

A. At retail only.

Q. And it is not an important feature of your business, these articles here?

A. No; it is not.

Q. You buy them in relatively small quantities?

A. Just here in this country; we don't import them; we buy them here from the importers.

Q. In odd lots?

A. No; it is a regular article and we buy it as we need it. [342]

Q. Seam bindings like bone casing are used flat, are they not?

A. Yes, sir.

Q. So that a binding is not necessarily something which is doubled over?

A. Not always. A seam binding is doubled over; but the bone casing is a little heavier material; and sometimes they call it bone casing and sometimes a binding ribbon, which are different things.

115 Q. But the chief object of these articles here, [343] referring to these narrow goods, Exhibit A, is to cover the seams of various garments, which otherwise would present a rough appearance, and incidentally in doing so to impart a finish; that is the whole story, isn't it?

A. That is the story.

Q. You don't regard them as trimmings?
A. They couldn't be considered trimmings at all (referring to Exhibit A); trimmings would be something on that order (referring to Exhibit C).
Q. A trimming is somewhat more elaborate?
A. Yes; cotton trimming or silk trimming.
Q. That would also apply to Exhibit B, that it is not a trimming? [344]
A. Yes.
Q. The use of this article is illustrated by these exhibits that you see before you?
A. Yes; to make a little finish.
Q. Would you recognize them under the name of herringbone?
A. Herringbone is a little different article than that.
Q. See any herringbone in Exhibit A?
A. No; that is featherstitch braid. This is more on the order (referring to narrow samples in Exhibit C).
Q. They represent to your mind the idea of herringbone? [345]
A. Yes.

By Mr. NICHOLS:

Q. Herringbone is the name of a pattern?
A. It can be done by hand; but this is just an imitation of hand work.
Q. However it is done, it refers to a pattern or a design?
A. Yes.
116 Q. It doesn't refer to an article, but the design that is used on it? [346]
A. Yes.

By Mr. WASHBURN:

Q. Bindings which are doubled in use are not used on undergarments, are they?
A. No. This same thing is used in underwear (referring to goods on illustrative Exhibit L).
Q. This is used in underwear?
A. This is featherstitched braid, used on underwear, and it is used on children's clothes.
Q. Used for binding seams?
A. For covering seams, not for binding; for finishing seams. [347]
Q. Is this binding which you refer to ever used in underwear, what you call binding?
A. No.
Q. Or undergarments?
A. No.

By Mr. NICHOLS:

Q. You have bought these featherstitch braids in wholesale quantities?
A. We buy them from the wholesalers, yes.

B. B. STERN, called as a witness on behalf of the United States, being duly sworn, testified as follows: [348]

By Mr. NICHOLS:

Q. You are in the dry goods business?
A. Buyer for Stern Brothers.
Q. Are you familiar with featherstitch braids?
A. Yes, sir.
Q. How long have you known what are described as featherstitch braids in the trade?
A. Fifteen years.
117 Q. Been buying them for fifteen years? [349]
A. Yes, sir.
Q. Have you bought and handled articles similar to Exhibit A?
A. Yes, sir.
Q. And Exhibit B?
A. Yes, sir.
Q. And Exhibit C?
A. Yes, sir.
Q. And under what name are they handled in the trade?
A. These two are featherstitch [referring to Exhibits A and B]. This is a trimming [referring to Exhibit C], although some of these small ones could go in with Exhibits A and B; these small [350] ones are known as featherstitch, these here, for instance [indicating several samples in Exhibit C].
Q. You are referring to these narrower goods in the collective Exhibit C?
A. Yes, sir.
Q. And the broader ones in collective Exhibit C, you would call trimmings?
A. Yes, sir.
Q. Referring to what you call featherstitch, you mean featherstitch braids?
A. Yes, sir.
Q. When you use the term "featherstitch" it is an abbreviation for featherstitch braids? [351]
A. Yes, sir. If a lady comes in the store and asks for featherstitch we show here these articles [pointing to Exhibits A and B]; it is known as featherstitch braid.

By Mr. WASHBURN:

Q. Featherstitch is a common name for them, just featherstitch?
A. Yes, sir.

118 By Mr. NICHOLS: [352]

Q. That is short for featherstitch braid?
A. Yes, sir.

By Mr. WASHBURN:

Q. Or featherstitch binding or tape?
A. No; featherstitch braid.

By Mr. NICHOLS:

Q. Are they as a matter of fact braids? Are they known as featherstitch braids?

A. They are known as featherstitch braids.

By Mr. WASHBURN:

Q. As a matter of fact they are not braids? [353]

A. No; they are not braids. They are used as trimmings.

By Mr. NICHOLS:

Q. Aren't braids sometimes used for trimmings?

A. No, sir. Braids are sometimes used for decorative purposes.

Q. Used for the same purpose that the trimmings are then?

A. Yes.

Q. So that is a trade name, featherstitch braid?

A. Yes, sir.

Q. And it applies to these articles that you have mentioned? [354]

A. Yes, sir.

Q. Are you familiar with what is known as bindings in the trade?

A. Yes, sir.

Q. And are they a different kind of article?

A. Different kind of articles.

Q. Sold as ——

A. Sold as bindings.

Q. Referring to this Exhibit E, for instance, and the narrow
119 piece of cloth that is used to cover the seam, made out of the same material as the garment, is that what you call a—or what would you call that? [355]

A. A binding tape.

Q. Does that in any way resemble any of these Exhibits A, B, or C?

A. No, sir.

Cross-examination by Mr. WASHBURN:

Q. Nevertheless, Mr. Stern, it is true, is it not, that the binding tape in Exhibit E is used for the same purpose as this featherstitch in Exhibit D, to wit, to cover the seam?

A. In that instance (Exhibit E) you are using this for the same purpose as you are using that (referring to Exhibit D). [356]

Q. In these instances they are used for the same purpose?

A. Yes, sir. We are using these both for the same purpose, althogh this here (referring to article on Exhibit E) is the article which I would call a binding tape. In Exhibit D this is known as featherstitch braid, a trimming effect.

Q. That is a finishing effect?

A. A trimming effect, I would call it.

Q. Is it not sold as a trimming, is it?

A. It can be used as a trimming and it can be used as a finish; it can be used in both ways. [357]

Q. As a sort of finishing tape?

A. Not only for children's garments; it can be used for bathing suits, used for trimming.

Q. Or a finish?
A. Or a finish.
Q. When you say a finish you mean a sort of finishing tape?
A. Yes; over seams.
Q. Are Stern Brothers retail dealers?
A. Yes, sir.
120 Q. And your familiarity with these articles has [358] been acquired in your capacity as buyer for Stern Brothers?
A. Yes, sir.
Q. Were you their buyer in 1897?
A. No, sir.
Q. For whom?
A. Rothenberg & Company.
Q. Is that another dry goods concern?
A. Yes, sir.
Q. Retail also?
A. Yes, sir.
Q. In other words, Mr. Stern, you have been a buyer for retail houses for a number of years, have you not? [359]
A. Yes, sir.
Q. And during that time you have bought these articles?
A. Yes, sir.
Q. Would your recognize them under the name of herringbone?
A. Call them herringbone. We have had people call for herringbone and we show them our featherstitch braids.
Q. They would come in and ask for featherstitch and you would show them these?
A. Yes.

By Mr. NICHOLS: [360]

Q. Would people buying at retail come in and use names which you would recognize as indicating featherstitch braids?
A. Yes.
Q. It doesn't make any difference what these goods are used for, they are known in the trade and bought and sold in wholesale quantities as featherstitch braids?
A. Yes, sir.
121 By Mr. WASHBURN: [361]
Q. And your experience has been acquired as a buyer in the way you have described?
A. Yes, sir.

HENRY W. SCHLOSS, called as a witness on behalf of the United States, being duly sworn, testified as follows:

By Mr. NICHOLS:

Q. Are you engaged in the dry goods business?
A. I am engaged as a manufacturer and importer and dealer in braids and trimmings.

Q. Were you familiar in 1897 with what is known as featherstitch braids in the trade? [362]

A. Yes, sir; I was.

Q. Showing you collective Exhibits A, B and C, under what names were they known, bought, and sold generally?

A. Exhibit A was known commercially as herringbone or featherstitch braid. But they are not made on a braiding machine; they are made on a power loom, they can be made on a hand loom, but usually on power looms. Exhibit B I would classify as trimmings; and Exhibit C also as trimmings.

Q. Exhibits A and B more particularly known as featherstitch braids? [363]

A. There are some of them featherstitch braids; I wouldn't consider them all as featherstitch; but I would classify them all, A, B and C, as trimmings.

Cross-examination by Mr. WASHBURN:

Q. You are not engaged in buying and selling these goods, are you?

A. Not to-day; I am not even manufacturing them.

122 Q. And have not for a good many years? [364]

A. Off and on at different times. We use similar goods in our manufacturing to-day, which we buy and import.

Q. Referring especially to Exhibit A, these narrow——

A. We have bought some of these within the last year as trimmings, not as featherstitch or herringbone, but as trimmings.

Q. And you don't regard them as braids really, do you?

A. I do not these (referring to Exhibit A).

Q. They are used more or less to cover up seams, are they not? [365]

A. No; they are used for various purposes; for covering seams and ornamenting purposes, laid flat, also stitched with other materials to form trimmings.

Q. You use them for that purpose?

A. We do.

Q. But in the condition in which you find them you don't regard them as trimmings in the same sense that you regard the braids that you carry as trimmings, do you?

A. No; this (referring to Exhibit A) is a loom article; whereas braids as they are made to-day are made on a braiding machine. [366]

Q. Strictly speaking, those narrow goods that you hold in your hands, Exhibit A, are sort of finishing tapes, are they not?

A. They are used for that purpose.

Redirect examination by Mr. NICHOLS:

Q. It doesn't make any difference how a braid is made, does it, as long as it is known as a braid in the trade?

A. No, I shouldn't say so. I should say a braid is made on a

123 braiding machine; and such goods as are exhibited here, which are made on looms, are [367] classified as a trimming, regardless of how they would be labeled. You can label anything and call

it a braid, call it a trimming, whether it is made on a loom or braiding machine. But commercially speaking they are regarded, these in Exhibit A, as featherstitch or herringbone braid, when they are sold in the notion trade for that purpose. They are used for other purposes as trimmings, as I said before.

Q. You are referring to their use as trimmings and not to their commercial designation?

A. As both. They are used as a trimming; but commercially speaking they are put up and sold by the notion trade as featherstitch and herringbone braid. [368]

Q. That is the way they are bought and sold?

A. When they are put up that way. They are sometimes put up as a trimming and sold as a trimming.

Q. But more generally sold as braids?

A. Sold as braids.

By Mr. WASHBURN:

Q. More generally?

A. More generally.

Q. That is, in the notion department?

A. In the notion department. [369]

Q. You said that some of these narrow goods in Exhibit A you would not regard as featherstitch braids; that applied to most of these goods in Exhibit A, did it not?

A. No; only a few of them.

Q. The plain white goods; it applied to those?

A. No. There is one I wouldn't consider a featherstitch braid (referring to sample having blue dots); possibly that is the only one in the lot.

124 By Mr. NICHOLS: [370]

Q. The rest of them are all featherstitch braids?

A. The rest of them are all featherstitch braids, commercially speaking.

Q. When you referred to them as trimmings you are referring to the use to which they are applied?

A. The general article, as manufactured on a loom, as a trimming—I would consider it a trimming. When it is put up for the specific trade they are commercially known as a featherstitch or feather-edge braid.

By Mr. WASHBURN:

Q. Also known as herringbone?

A. Also known as herringbone. [371]

By Mr. NICHOLS:

Q. Or herringbone braid?

A. Or herringbone braid.

By Mr. WASHBURN:

Q. They are called herringbone—the term herringbone would describe them, would it not?

A. It is understood that if we say herringbone, it means a herringbone braid.

Q. They are called featherstitch?

A. They are called featherstitch; but if they say featherstitch they mean featherstitch braid, and they usually label it as such. [372]

Q. As a matter of fact you don't buy and sell these goods, A and B, in wholesale quantities?

A. Not to-day.

Q. And you did not in 1897?

A. Yes.

Q. Buying it in wholesale quantities?

A. Wholesale quantities; at one time very extensively.

Q. When was that time?

125 A. Within the last 15 or 20 years we [373] have been selling more or less; at certain times we have sold it more and at other times less; but in the last five or six or seven years we have not handled it extensively; only for manufacturing purposes.

Q. To manufacture in trimmings?

A. That is, to make trimmings out of.

By Mr. NICHOLS:

Q. Are any of these goods known as bindings in the trade?

A. No.

By Mr. WASHBURN: [374]

Q. You don't carry bindings, do you?

A. Yes; we sell and manufacture and buy bindings.

By Mr. NICHOLS:

Q. You import these articles?

A. We do.

Q. You have imported these Exhibits A, B, and C, extensively?

A. Yes; we are now, but we are not selling it as a featherstitch braid or herringbone.

Q. But they are used in the trade as such?

A. Yes, sir. [375]

By Mr. WASHBURN:

Q. As a matter of fact they are used under various names?

A. They are.

J. G. WILLIAMS, called as a witness on behalf of the United States, being duly sworn, testified as follows:

126 By Mr. NICHOLS: [376]

Q. You are in the dry goods trade, Mr. Williams?

A. Yes, sir.

Q. And were in 1897?

A. Yes. I am a buyer; I have been a buyer and assistant buyer since 1897; I have been mixed with them since that time.

Q. And familiar with these samples, Exhibits A, B, and C?

A. Yes, sir.

Q. What have you learned to call those in the trade?

A. These narrower braids covered by Exhibits A and B I would call them in the trade featherstitch [377] braids or herringbone trimmings. These wider ones represented by Exhibit C, I would call that a cotton trimming braid, cotton trimmings.

Q. Are they all known as braids?

A. In the broad term I would call them all braids.

Q. And the more special term is for the most part featherstitch braids?

A. Featherstitch braids or herringbone trimming, although the featherstitch term is used more frequently.

Q. That is the more general or commercial term?

A. Yes. [378]

Q. And the herringbone is a description of a particular pattern?

A. A design or a pattern. There is one (referring to one of samples in Exhibit B).

Q. They are bought and sold under the name featherstitch braids?

A. No other term.

Q. Are any of them known as bindings?

A. I would say no.

127 Q. That is a distinct class of articles, bindings? [379]

A. Yes.

Q. These (articles in suit) are all used for decorative purposes, to embellish articles?

A. That is the idea.

Q. Does it make any difference whether it is used to cover a seam or not as far as their name is concerned?

A. Not at all.

Q. Do you know what they are used for?

A. Yes; generally speaking.

Q. How are they used in the manufacture of garments?

A. These narrower ones are used for seam coverings; and I have also seen them on trimming [380] for night robes; I have seen them going around the border of a night robe and around the sleeve and neck.

Q. As a sort of trimming?

A. As a trimming, in that case particularly.

Q. That is the chief purpose—would you describe the chief purposes as decorative, embellishment?

A. Yes, I would; otherwise a plain braid might be used.

Q. Without ornamentation?

A. Yes.

Q. These are all ornamented? [381]

A. Yes.

Q. Do you know how the word "featherstitch" originated? Did it apply to a certain character of ornamentation?

A. I never gave it any thought; but I should suppose it comes from that sort of featherstitch design, so to speak.

Q. At any rate you know that it is never applied to anything that is perfectly plain?

A. That is the idea.

128 Cross-examination by Mr. WASHBURN: [382]

Q. Mr. Williams, you are related to Joseph D. Williams?

A. No; not at all.

Q. Have you stated the name of the house for which you are a buyer?

A. John Wanamaker.

Q. How long have you been a buyer for the house of Wanamaker?

A. Actually installed as buyer just very recently; but I have been assistant buyer handling this merchandise for ten years, perhaps.

Q. You have been principal buyer for how many months? [383]

A. I was only appointed last Saturday, if it comes to that; but that has no bearing on my experience.

Q. Prior to that time you were assistant buyer, were you?

A. Yes.

Q. You don't mean to say buying for Wanamaker?

A. Yes.

Q. And how long had you been engaged in that position?

A. About ten years.

Q. About ten years?

A. Yes. [384]

Q. You think you were in 1897 assistant buyer for Wanamaker?

A. Yes; I came to New York about the middle of January, 1897.

Q. To take the position as assistant buyer?

A. Yes.

Q. You don't mean to say that in your capacity as assistant buyer in 1897 and the four or five years succeeding that you actually

129 bought these goods, do you, goods covered by these Exhibits A, B, and C? [385]

A. Oh, yes; I have bought them.

Q. Was it a part of your duty to buy them?

A. Yes.

Q. At that time?

A. Yes.

Q. And not the duty of the principal buyer?

A. Either one of us.

Q. But you personally bought the goods, did you?

A. Oh, yes; I have bought lots of featherstitch braids in my time.

Q. I am talking about 1897?

A. That I couldn't answer. If you ask whether [386] I bought any featherstitch braids in 1897 or not, that question I couldn't answer; I couldn't tell you that positively.

Q. Or 1898?

A. I couldn't even answer that.

Q. 1899?

A. I must have.

Q. Or 1900?

A. I certainly did.
Q. Something about 1900 you actually began to buy them?
A. I am sure of that.
Q. But you couldn't be sure about 1897 or 1898? [387]
A. The chances are that I did. If anything hinges on that I wouldn't want to say yes positively.
Q. You buy them, of course, to sell at retail, do you not?
A. Yes.
Q. Pick them up from jobbers?
A. Yes; we buy them in the market here—from the importers here.
130 Q. And also from domestic people, I suppose? [388] Anywhere where you can get them?
A. That is the idea. It is not as large a business with us as it was at one time.
Q. You have told Mr. Nichols that they are used to embellish articles. You don't mean to say that they are included in the class of goods which you know as trimmings, do you? I am referring now to the Exhibits A and B; you don't call those trimmings?
A. Generally speaking, we wouldn't call them trimmings. It is when we come to the wider widths that we call them trimmings—trade terms I am speaking of. [389]
Q. These goods (referring to the narrow goods in Exhibits A and B) are really used chiefly to cover up seams, bind seams, and incidentally in so doing to impart a finish?
A. That is what I wish to convey.
Q. Would you say that you are familiar with various kinds of bindings?
A. Yes.
Q. You know about silk taffeta bindings?
A. Yes.
Q. Laid on flat, isn't it?
A. Yes.
Q. You wouldn't care to say that these articles (referring to Exhibits A and B) are not dealt in, [390] bought, and sold as herringbone binding or featherstitch binding, would you?
A. They are called featherstitch bindings commercially.

By Mr. NICHOLS:

Q. Do you mean bindings or braids?
A. Featherstitch braids.
Q. You didn't mean bindings, did you?
A. We would call these featherstitch braids or herringbone trimmings.

131 By Mr. WASHBURN: [391]

Q. But you would not desire to be understood as saying that they are not also known as featherstitch bindings or herringbone bindings?
A. I have never heard them called as such.

Q. They are sold under various names?

A. Just the two: the featherstitch braid and herringbone trimming; those are the two trade terms.

Q. And you have heard of other names, too?

A. Not that I can recall.

Q. As a matter of fact they are sort of finishing tape, are they not?

A. I can say yes to that. [392]

Q. And an order for finishing tapes would include goods like these Exhibits A and B, would it not?

A. Yes.

Q. Wanamaker sells these goods at retail?

A. Yes.

Q. And they carry them in the notion department, do they not?

A. The featherstitches we would carry in the notion department. This line (referring to Exhibit C) would come in another stock; yes, I have bought similar articles to these; that is a trimming. These (referring to Exhibits A and B) are notion articles; and that (Exhibit C) is a trimming. [393]

By Mr. NICHOLS:

Q. You don't call the Exhibit C tapes, do you?

A. No.

Q. Do you mean herringbone tapes, do you mean that is what you might call a subsidiary term under which they are sold? The general term, I understood you to say, was featherstitch braids?

A. Or herringbone trimmings.

132 Q. But you don't mean that the tape is the [394] general commercial term under which they are bought and sold in wholesale quantities?

A. Not at all.

By Mr. WASHBURN:

Q. I show you Exhibit D; does that illustrate the use to which the article is put?

A. Yes; that is the idea.

Q. I show you Exhibit E; there the plain tape is used in the same way, is it not?

A. Yes.

Q. In one case they use the plain goods and in the other the fancy goods?

A. Yes, sir. [395]

Q. The use, however, is the same?

A. Yes.

By Mr. NICHOLS:

Q. The use is the same just as coal and wood are used for the same purpose, but they are called by different names?

By Mr. WASHBURN:

Q. Do you buy coal and wood in wholesale quantities?

A. I don't recall that I ever did; no.

By Mr. NICHOLS: [396]

Q. You do these goods, like Exhibits A and B, in wholesale quantities?

A. Yes, sir.

Q. And you don't mean to say that they are tapes simply because something that is used for the same purpose in covering the seam of a garment that is plain, do you?

A. No, I don't; because that is a plain tape it wouldn't necessarily follow that the other was a tape also.

133 By Mr. WASHBURN: [397]

Q. As a matter of fact, it is a sort of fancy tape? I am talking about the plain edge goods like Exhibit A?

A. That is nothing else—yes, that is a fancy tape.

Q. The term featherstitch is a broad term to define and to cover a great many different designs?

A. As I understand it, yes.

By Mr. NICHOLS:

Q. And these are all featherstitch braids, referring to Exhibit A?

A. Yes, sir. [398]

Q. Although they might be sometimes referred to as fancy types?

A. Oh, yes.

By Mr. WASHBURN:

Q. Or fancy bindings, I suppose?

A. I never heard them so referred to. There are so many terms that could be applied to these.

Q. Each one of them just as accurate as the other for all practical purposes?

A. Yes.

By Mr. NICHOLS: [399]

Q. If a customer came in and described these by any name——

A. If they asked for fancy tapes we would charge them just as much.

Q. But in dealing in wholesale quantities with the trade you say the commercial names for them would be——

A. Would be featherstitch braids; and occasionally we use the term herringbone trimmings.

134 THOMAS J. HEAPHY, called as a witness on [400] behalf of the United States, being duly sworn, testified as follows:

By Mr. NICHOLS:

Q. Mr. Heaphy, are you in the dry goods business?

A. Yes, sir.

Q. And familiar with the subject of featherstitch braids?

A. Fairly, yes.

Q. And you buy them?

A. Yes, sir.

Q. For what firm?

A. Lord & Taylor. [401]

Q. Can you state what these articles marked Exhibits A, B, and C are known as in the trade commercially?

A. Why, we have bought them under the heading of featherstitch braids, and we have also heard them called both ways, but never bought them as herringbone trimmings.

Q. You have always bought them under the commercial term featherstitch braids?

A. Yes, sir.

Q. And they are not bought as bindings?

A. No, sir.

Q. Or by any other name, in fact? [402]

A. No, sir; featherstitch braids is the only term that is ever used by us.

Cross-examination by Mr. WASHBURN:

Q. Now, Mr. Heaphy, do you recall testifying in this case?

A. I remember that I did.

Q. You remember that you did testify on some other occasion in this case?

A. Yes, sir.

135 Q. Do you remember saying that you had known them by other names than featherstitch braids? [403]

A. You mean commercially or selling at retail over the counter? Over the counter I have heard them called finishing braids and trimming braids.

Q. Finishing tapes also?

A. Yes, sir.

Q. Finishing bindings also?

A. That I couldn't say.

Q. They are used chiefly to cover seams, are they not?

A. Yes, sir; and also I understand for trimming purposes.

Q. But their chief use is for covering seams in the way that you have seen them on the exhibits before you? [404]

A. Yes.

Q. And incidentally in so covering the seams they impart a finish to it?

A. Yes, sir.

Q. But their use in Exhibit D corresponds to the use of the plain tape in Exhibit E, does it not?

A. Yes, sir.

Q. Only in one case they use the plain goods and in the other the fancy goods?

A. As it appears here; yes, sir.

Q. Lord & Taylor is a retail concern, I believe?

A. Yes; that is, in this line of goods. [405]

Q. And you buy them to be sold over the counter by Lord & Taylor?

A. Yes, sir.
Q. Do you know about silk taffeta bindings?
A. Yes.
Q. They are laid on flat, are they not?
A. As I understand it; yes, sir.
Q. In other words, a binding may be laid on flat as well as doubled up?
A. That I wouldn't say. I am not familiar with that part of the business.

136 By Mr. NICHOLS: [406]

Q. You don't know how binding is used?
A. No; I do not.

By Mr. WASHBURN:

Q. You know about silk taffeta bindings?
A. We buy it.

By Mr. NICHOLS:

Q. You don't know how it is used?
A. No, sir.
Q. Whether it is doubled over and folded before it can be applied, you don't know anything about that? [407]
A. No, sir.
Q. Your recollection as to the commercial use of this term featherstitch braid goes back to 1897?
A. Yes, sir.

By Mr. WASHBURN:

Q. But at that time, 1897, July 24th, you had only ordered about twenty-five dollars' worth of goods?
A. Somewhere in that neighborhood; we use very little of it.
Q. How old are you?
A. I am 31. [408]

By Mr. NICHOLS:

Q. Referring to Exhibits D and E here, although there is a piece of cloth used to cover the seam, in one case plain and in the other having a fancy pattern on it, the fact that they are used for the same purpose doesn't change the fact that where it is fancy it is known as featherstitch braid?

A. No, sir.

137 Q. In the other case it might be called something else? [409]

A. Yes.

By Mr. WASHBURN:

Q. But if you had an order for finishing fancy tapes or fancy bindings would you include goods like Exhibit A?
A. Yes.
Q. In fulfillment of the order?
A. Yes.

By Mr. NICHOLS:

Q. You would sell them under any other name?

A. Yes, sir. [410]

By Mr. WASHBURN:

Q. As a matter of fact they have a variety of names?

A. Yes, sir.

By Mr. NICHOLS:

Q. That has no bearing upon the commercial name by which they are known in the wholesale trade?

A. No, sir; only one name.

Q. That is featherstitch braids?

A. That is featherstitch braids. [411]

By Mr. WASHBURN:

Q. Sometimes order them as herringbone?

A. I have heard of them as such, but never ordered them that way.

Q. You are talking about your personal experience?

A. Yes, sir.

Q. You don't know how other people order them?

A. No.

138 Q. As a matter of fact these kinds of articles [412] have a great variety of names and you personally order them as featherstitch braids?

A. Yes, sir.

By Mr. NICHOLS:

Q. When you say a great variety of names you merely refer to the retail trade over the counter?

A. Yes.

Adjourned.

LEOPOLD BARUCH

vs. No. 4419. [413]

THE UNITED STATES.

Hearing resumed April 25, 1907.

Present: Albert H. Washburn, Esq., for the importer; J. Osgood Nichols, Esq., assistant United States attorney, for the United States. [414]

(Same stipulation as to swearing witness by U. S. commissioner as made at previous hearings.)

W. S. FERGUSON, called as a witness on behalf of the importer, being duly sworn, testified as follows:

By Mr. WASHBURN:

Q. Mr. Ferguson, what concern are you connected with?

139 A. Denver Dry Goods Company, Denver, Colorado. [415]

Q. Is that a large concern?

A. A concern that does a three and a half million dollar retail business a year.

Q. In what capacity are you engaged with them?

A. Resident buyer.

Q. I show you official Exhibits A and B in this case and ask you if you are familiar with goods of that character?

A. I am.

Q. How long have you been familiar with them?

A. 25 years.

Q. During that time have you bought and sold them in wholesale quantities? [416]

A. In both ways, yes; I have bought them and sold them.

Q. Extensively?

A. Very largely.

Q. Whether or not you have bought and sold them for other concerns than the Denver Dry Goods Company, with which you are at present associated?

A. Yes.

Q. Will you tell us under what names they are known in the trade?

A. Featherstitch bindings, featherstitch tapes, and they are occasionally called featherstitch braids. [417]

Q. Are featherstitch bindings and featherstitch tapes names more usually employed, as you have found them in your experience?

A. Yes.

Q. Would you say that it is true that the term featherstitch braid is used very little in the United States?

A. Very little, to my knowledge and belief, in selling and in buying.

140 Q. And you have occasionally known of their [418] being called featherstitch braids?

A. Yes; finishing bindings more than featherstitch.

Q. And finishing tapes?

A. And finishing tapes; more finishing tapes as commonly spoken of now than featherstitch.

Q. Is it true then that an order for featherstitch binding or featherstitch tapes would not be complete without the inclusion of goods of this character?

A. No.

Q. For what purpose are goods of this sort used? [419]

A. For the practical purpose of covering a raw edge or covering a seam.

Q. Binding, in other words?

A. Binding the seam; for a practical purpose.

Q. By the way, you are familiar with braids?

A. Yes; I am.

Q. Buy those, too?

A. Plenty.

Q. Are goods of this character [referring to Exhibits A and B] ever carried in the braid department, to your knowledge?

A. They are not; these are carried and sold in the notion department.

Q. Something separate and distinct? [420]

A. Entirely separate from the braids and entirely separate from the embroidery department.

Q. How are they made? Are they braided or woven?

A. I should say woven on a hand or power loom.

Mr. NICHOLS. I object to the testimony on the ground that it is not shown that he is familiar with the process of manufacture.

141 By Mr. NICHOLS: [421]

Q. You don't know, do you?

A. I don't know. I said "I should say;" I assume that.

By Mr. WASHBURN:

Q. How are bindings applied?

A. Well, they are either applied flat or stitched on both sides.

Q. That is, doubled?

A. Doubled; either way.

Q. In your experience are goods of this character regarded as trimmings or used as trimmings? [422]

A. Never in my experience.

Q. Have you a sample of silk taffeta binding?

A. I have.

Q. This is such an exhibit, is it?

A. That is a silk taffeta binding.

Mr. WASHBURN. I offer that in evidence.

(Same received and marked "Importer's Illustrative Exhibit M.")

Q. Is that applied flat?

A. Applied both ways.

Q. You say goods of this character are not carried in the braid department nor in the embroidery department? [423]

A. In neither department.

Q. They have no embroidery on them?

A. No; they are sold in notion departments, where the tapes are sold and where the taffeta bindings are sold.

Q. Same place?

A. Same place.

142 Cross-examination by Mr. NICHOLS: [424]

Q. What else is sold in the notion department?

A. Needles and pins and spool cotton and crochet articles, hooks and eyes, tapes.

Q. That isn't all, is it?

A. I couldn't name it all.

Q. You don't know, in fact, all the articles that are sold in the notion department.

A. Yes; I could tell, but it would take a long time to itemize them.

Q. There is a very great variety of them?

A. There is a very great variety of them.

Q. Have you got a braid department?

A. We have a braid department; yes, sir. [425]

Q. What description of articles do you carry in the braid department?

A. The braid department is mostly either mohair or silk or fancy braids, used for ornamental purposes, I should say.

Q. What is carried in the notion department or braid department or in other departments in your store wouldn't form any rule as to what would be sold in similar departments in other stores?

A. I think they would be carried about the same.

Q. You mean in a very general sense?

A. In a general sense; yes. [426]

Q. Is it a good deal a matter of convenience of the particular store and the administration as to what is carried in one department or another?

A. Well, they departmentize various departments in a department store, where goods that are used for about the same purpose are collected together; as, for instance, in the notion department where these articles are sold is where dressmakers' supplies are usually called for; a woman who is buying her dressmaking supplies
143 likes to get as much as she can all the stuff at the same counter. [427]

Q. That is what I meant, a matter of convenience to the customers and to some extent the convenience of the store. That is, a man may have a particular experience in handling certain articles and they are put under his department, where perhaps in another store they might go in another department. Is that true?

A. I don't think you would find a notion department to fill a notion position in any store—that is, a notion buyer would not be familiar with embroidered goods nor trimmings.

Q. Sometimes might?

A. Very seldom, in my experience. [428]

Q. In the braid department braids constitute the bulk of the material handled there, or only a small part?

A. Take it in the store that I am representing, in our braid department is where they sell buttons, braids, and embroideries, almost in the same aisle.

Q. Have you got a trimming department?

A. Trimmings are called with the braids; we call trimmings and braids the same.

Q. That is, the trimmings and braids are practically the same thing so far as the custom of your store is concerned? [429]

A. Trimmings and braids are the same.

Q. Trimmings and braids a broad term?

A. Dress trimmings would be a broad term; passamenterie——

Q. They are used by dressmakers?

A. They are used more as the finishing touches.

Q. The dressmaker would purchase these articles in the exhibits as trimmings, I suppose, sometimes?

144 A. I hardly think so, without she was making undergarments. [430]

Q. I mean for trimming undergarments?

A. For trimming undergarments.

Q. Those particular trimmings?

A. I think those are used most extensively on undergarments.

Q. For that purpose they would be called trimmings?

A. Would be called a trimming; yes.

Q. And sometimes a featherstitch braid?

A. Yes; more often featherstitch binding than it would be called a trimming or a braid.

Q. Do you understand just what a binding is? [431]

A. I do.

Q. You understand that a binding is something which is set on a seam to hide the seam?

A. I should call that (referring to Exhibit A) a binding for that purpose.

Q. I mean simply to hide the seam?

A. Simply to hide the seam.

Q. Not to hold the two pieces together?

A. Not to hold the two pieces together, but to finish it up.

Q. Then in your opinion a binding is not necessarily folded over a seam so as to bind it together?

A. Not necessarily. [432]

Q. So that the word binding has no application as a descriptive term when what you call a binding is sewn on flat?

A. No.

Q. It doesn't bind anything under those circumstances?

A. No; nothing only to hide up a rough edge or to finish it up.

Q. To finish the garment or trim it?

145 A. Finish up an edge where there are two pieces sewed together. [433]

Q. It wouldn't add any strength to the garment?

A. No.

Q. Then its object would be merely decorative?

A. I don't think so.

Q. It would improve the appearance of the garment?

A. Yes.

Q. It would merely make the garment look more attractive?

A. Yes; I guess it would.

Q. In that sense it would be used as a trimming, [434] wouldn't it? I am speaking generally; in its general sense you would consider it proper to call it a trimming when used for such purpose?

A. No; I don't think so.

Q. What would be the distinction?

A. I can't see where it would improve or make it look, from my view, as a trimming.

Q. I am referring to undergarments; these might not look well on a sealskin cape.

A. I am only figuring for practical purposes, not to beautify the practical purpose of covering up that rough edge or two edges coming together, where it would not look well; but I can't say it would be put there to embellish the garment or improve the looks of it. [435]

By Mr. WASHBURN:

Q. Mr. Ferguson, showing you illustrative Exhibits D and F, does that illustrate the use to which goods of this sort are put on children's gowns and caps?

A. Certainly; that is as plain as A, B, C; that illustrates just the same as if a woman made that featherstitching around there
146 and covers up this raw edge; that is put on there to join the two [436] together, and while another might be used to place over the edge.

By Mr. NICHOLS:

Q. It is perfectly clear that the purpose of that is to improve the appearance of the garment?

A. Not to improve the appearance, but to finish the garment.

Q. Isn't that the result of improving the appearance?

A. You might improve and finish both; it is as broad one way as it is the other. It wouldn't be a finished garment unless something was done there [437] to finish it up. This is done more to save the hand work, the stitching these two together gives the appearance just what a woman would do with a needle.

Q. Looks like embroidery?

A. That is what I call a practical term. No; it don't have any appearance of embroidery to me at all; it has the finishing appearance of what a woman would do by hand. This was the original featherstitch here (indicating); there is one stitch over one way and the other the other. Originally there was only about four patterns when I first commenced selling these goods.

By Mr. WASHBURN: [438]

Q. That is when?

A. About 1880. Now there is four hundred patterns and still they call them featherstitch.

Q. A very broad term, is it?

A. Yes.

By Mr. NICHOLS:

Q. Then the term featherstitch doesn't necessarily imply that it is a trade term?

147 A. A trade term. Here is the original featherstitch [indicating]. [439]

Q. So it doesn't make any difference as far as the trade use of the term what the particular pattern may be, does it?

A. No.

Q. So all these articles here in Exhibits A, B, and C, they are called featherstitch braids to some extent, irrespective of whether

they have the original featherstitching on them or not, I mean as a trade term?

A. I shouldn't call these featherstitch (referring to Exhibit C).

Q. You wouldn't call Exhibit C a binding, would you; I mean those that you are now examining, collective Exhibit C? [440]

A. No; these would be trimmings, fancy braids.

Q. They are braids?

A. Fancy braids.

By Mr. WASHBURN:

Q. Those would be in the braid department?

A. Those would be in the braid department. These wouldn't go in this (pointing to Exhibit A) department at all.

Q. Referring to the department in which you include A and B?

A. Yes. These (Exhibit C) would be sold in the braid or trimming department. [441]

Q. It is only A and B that would be referred to——

A. As featherstitch.

By Mr. NICHOLS:

Q. Would you call those, Exhibit C, trimmings?

A. I would call them trimmings, fancy trimmings?

148 By Mr. WASHBURN: [442]

Q. Or braids?

A. Braids or trimmings.

By Mr. NICHOLS:

Q. It might be called to some extent a featherstitch braid; I mean the narrower ones?

A. No, sir; they might go in it, but it don't belong there; it ain't in the family.

Q. Does your testimony run back to 1897?

A. Further than that. I have been handling this stuff since 1879.

Q. And all this stuff was known as featherstitch braids in 1897? [443]

A. It was known as featherstitch or finishing bindings at that time. When I sold them on the road I always sold them as finishing braids and finishing bindings; very seldom used that word featherstitch, except to designate one particular pattern.

Q. That was your particular custom as distinguished from the general usage?

A. It might have been from my experience and knowledge of knowing one particular pattern as a featherstitch; the others I have always known as finishing bindings.

Q. Or trimmings? [444]

A. Or braids. I don't know as I ever called them finishing trimmings, no.

By Mr. WASHBURN:

Q. And bindings or tapes is a term more frequently employed in your experience than braids to cover goods of this character?

A. I think it does; yes.

149 Q. In fact are goods of this character ordered [445] by your house as braids (referring to Exhibits A and B)?

A. They are always ordered as finishing bindings.

Q. That is uniform?

A. That is the way my orders come in for those goods.

Q. I show you Exhibits D, F and G and L; do these articles show the way and manner in which goods of this sort are used?

Mr. NICHOLS. I object to it. It has not been shown that the witness knows just how they are always used. [446]

A. I am more familiar with buying them than I am with manufacturing them.

By Mr. NICHOLS:

Q. You never made a baby's hat?

A. No. I think my testimony on that point wouldn't be of any service to you.

By Mr. WASHBURN:

Q. As far as your experience goes they are used chiefly for covering seams?

A. Chiefly for covering seams and edges.

Q. You would not regard them as trimmings? [447]

A. No. If I regarded them as trimmings I think we would carry them in our trimming department, where we have a large department.

By Mr. NICHOLS:

Q. That is the reason you don't regard them as trimmings?

A. That is the reason why I take the ground I do. They are sold in the same department that the tape is, where we sell Dutch tape, piping.

150 Q. Sold in the braid department? [448]

A. That is sold in the notion department.

Q. You sell thimbles in the notion department?

A. Yes.

By Mr. WASHBURN:

Q. And the arrangement in the various departments follows, does it, the general trade classification?

A. I think so, throughout the country.

By Mr. NICHOLS:

Q. You don't know what the practice is?

A. I don't know no more than when I sold goods [449] on the road for a few years and sold to a good many houses.

Q. You might put an article in one department because there was more room in that department than in another?

A. No; we try to systematize it and divide it up.

Q. Suppose in the arrangement of the aisles and divisions of your store there was a big rush of goods in one department and it was necessary to make more room, you might easily send certain of the goods to another department?

A. Not without the head of the same department; if the same buyer assumed charge of it he wouldn't put it under another head. [450]

Q. You might consolidate two small departments into one?

A. No; not without the same buyer had charge of the two departments.

Q. The same buyer might have charge of the braids and trimming departments; it depends upon the size of the store, doesn't it, how many departments you have?

151 A. No; not necessarily. Some large stores have [451] as many departments as the small stores do, divided, make a head of each one.

Q. You are acquainted with some stores that have only one department that are not big enough to subdivide at all?

A. But you will find in a case of that kind that some person will be designated to take charge of some particular part of it, unless the man has such a small store that he buys and sells the goods himself. Even in a small store, when there is no buyer, there are a few salesmen in there, and they pick out the salesmen to take charge of the different departments. [452]

Q. You are speaking of what theoretically is sought to be accomplished, but of course there must be some arbitrary difference between one store and another in the arrangement of the departments; isn't that true?

A. Yes.

Importer rests.

Government rests.

Testimony closed. [453]

152 TESTIMONY. [454]

Before the Board of U. S. General Appraisers.

Board No. 2.

IN THE MATTER OF THE PROTESTS OF C. M. VOM BAUR, [455] 49670/2–F, (58135/9–F, 61377–F, 61909–F, 62007–F, 67273/4–F, 67860–F, 67972–F, 68269/70–F, 68744–F, 70896–F, 71723–F, 74047/9–F, 75101–F, 75301–F, 75536–F, 75849–F, 76259/60–F, 76476–F), 87224–F, 87967–F, 88442–F, 89000/1–F, 89403–F, 89705/6–F, 90511–F, 91448–F, 91970–F, 92266/7–F, 93318–F, 93484–F, 95536–F, 97999–F, 99823–F, 2902/3–H, 3450–H, 4325–H, 5009–H, 6082–H, 8186–H, 9389–H, 10276–H, 11124–H, and 12560–H. [456]

NEW YORK, *March 14, 1904.*

Before General Appraiser HOWELL.

Appearances: Counsel for the Treasury Department, for the Government; Albert Comstock, Esq., counsel for the importer.

153 Counsel for the importers offers in evidence [457] as a part of the record in this case the testimony taken in the U. S. Circuit Court for the Southern District of New York in the case of A. Steinhardt & Bro. vs. The United States, No. 3215, which was the subject of the same class of merchandise which is covered by these protests and which testimony is found on pages 53 to 70, inclusive, of the said printed record.

There being no objection by counsel for the Government, the same is admitted in evidence.

CARL M. VOM BAUR, the importer, having been duly sworn, testified as follows: [458]

By COUNSEL FOR THE IMPORTER:

Q. Mr. Vom Baur, have you a personal knowledge of the character of the goods covered by the protests in your name which are the subject of this hearing to-day and which are against the exactions of 60 per cent ad valorem duty under the present tariff act under the classification of braids upon certain so-called featherstitch goods?

A. I have.

Q. What is this that I show you?

A. That is a sample card of the article, featherstitch braids. [459]

Q. Does this represent all the patterns and designs of those goods?

A. No; only a part of them.

Q. How do those not represented here, but included in these importations, differ from those shown on that card?

A. Differ in designs.

Q. That is the design that we find wrought upon the foundation fabric?

A. That's it.

154 Q. The ornamentation, as we might say? [460]

A. Yes, sir.

Q. Does this show about the total range of width?

A. Yes, sir.

Q. Now, are any of your goods of this class and covered by your protests produced by braiding or were they all produced by weaving?

A. All by weaving.

(Counsel for the importers offers the sample card in evidence, admitted and marked "Exhibit 7, 49670, F, etc.")

Q. Now, Mr. Vom Baur, I suppose your importations [461] were not made in such sized pieces as are shown in this little book?

A. Oh, no.

Q. Please describe in what shape they were imported.

A. They came in 24 pieces of six yards, or 36 pieces of 4 yards.

Q. How put up?

A. On boards or without boards.

Q. Sometimes without boards?

A. Yes, sir.

Q. In that case being wound on themselves?

A. On themselves. [462]

Q. You never imported them on spools?
A. No, sir.
Q. Did you ever import them in lengths or more than six yards in length?
A. May have; may have been 12 yards.
Q. But you are not sure of that?
A. No; not quite sure. It is usually four to six yards.
Q. How long have you been dealing in these goods in the markets of this country?
A. Well, for four years.
155 Q. Five years. [463]
A. May be more.
Q. What business were you engaged in from 1894 to 1897?
A. Importing notions.
Q. Did you not import this class of goods then?
A. I think I have; yes, sir.
Q. And dealt in them as well as imported them?
A. Yes, sir.
Q. Have you dealt in them ever since?
A. Yes, sir.
Q. Either in your own name or under other business connections?
A. Yes, sir. [464]
Q. During all the time you have known of these goods, please state by which name or names they have been designated in trade in this country?
A.

By COUNSEL FOR THE GOVERNMENT:

Q. I understood you to say you had been handling these goods for about five years; that is true, is it?
A. Yes, sir.
Q. What did you mean by saying you thought perhaps you had handled some of these prior to five years ago?
A. Well, I will say five years or more. [465]
Q. You modify that now by saying "or more," do you?
A. Yes, sir.
Q. Exactly how long have you been dealing in these goods?
A. I would have to refer to my books. I cannot say just exactly how long.
Q. So you cannot state positively what year you began dealing in them?
A. I cannot tell exactly when I began importing featherstitch braids.
156 Q. May have been 1898, 1899, or 1897; is that right? [466]
A. Well, I testified five years or more, so it must have been 1897.
Q. What did you say?
A. 1897, or prior to that.
Q. How many years have you been engaged in handling notions?
A. Handling notions—about fifteen years.

Q. But only till within a period of five years or more have you handled articles which you say are featherstitched braids?

A. Well, I don't know exactly when I commenced importing featherstitch braids. I cannot say the exact year. [467]

COUNSEL FOR THE GOVERNMENT. I don't think it appears clearly that this witness is competent to testify on the question of commercial designation.

By General Appraiser HOWELL:

Q. Is this a comparatively new article, Mr. Vom Baur?

A. It is not.

Q. You say you have been in the business about fifteen years?

A. Yes, sir. [468]

Q. And you cannot recall when you commenced to handle this particular article?

A. I cannot say exactly the year when I commenced importing them.

Q. Can you say whether it was as far back as the year 1895?

A. I think it was.

Q. 1895?

A. I think it was.

Q. May have been later or may have been earlier?

A. May have been earlier.

157 By COUNSEL FOR THE GOVERNMENT: [469]

Q. May have been 1890?

A. May be.

By COUNSEL FOR THE IMPORTER:

Q. Now I will ask the stenographer to read my question. [Question read.] During all the time you have known of these goods please state by which name or names they have been designated in trade in this country?

A. In this country they have been named as featherstitch braids, as finishing tape, herringbone webbing, as seam binding—that is about all.

Q. And do you say that any one of those names would at all the times during which you have [470] dealt in these goods have designated them commercially?

A. Yes, sir.

Q. How can the general appraisers in passing upon these protests identify the goods of this character on your invoices?

A. As featherstitch braids.

By COUNSEL FOR THE GOVERNMENT:

Q. That is the usual way in which they are invoiced?

A. The usual way.

By COUNSEL FOR THE IMPORTER: [471]

Q. You mean invoiced from abroad?

A. Yes, sir.

By Counsel for the Government:

Q. And it is the usual way in which you bill goods in this country when you sell them here?

A. Usually.

Q. As far as you know it is the usual way in which they are sold and bought under different inquiries, as I stated.

158 Q. But I am talking about the usual word, the [472] one that is most commonly employed?

A. Yes, sir.

Q. In other words, the term featherstitch braids expresses a little more nearer and exactly than any other terms you have given us this particular class of goods, does it not?

A. Yes, sir.

Q. What are they used for, Mr. Vom Baur?

A. Mostly for covering seams or binding seams.

Q. For what?

A. Covering seams or binding seams.

Q. For women and children's——

A. Underwear, sir. [473]

Q. Underwear and garments?

A. Yes, sir.

Q. You sell these, you have testified, in skeins or bunches?

A. In either one, wound round a board or on themselves.

Q. And they usually have a label?

A. Yes, sir.

Q. Labelled featherstitch braids?

A. Yes, sir, mostly, not always.

By Counsel for the Importer:

Q. Is there any doubt in your mind, Mr. Vom [474] Baur, that the term bindings has since the time prior to 1897 always been a term or word of designation or are you sure?

A. Oh, yes.

Q. Used by you in your business?

A. Yes, sir.

Q. Upon an inquiry for bindings received by you in the ordinary course of business prior to 1897—an inquiry for all your bindings, samples, and prices, would you or would you not have included

159 the featherstitch braids represented by the Exhibit 1 here in your reply? [475]

A. Certainly.

Q. Do you consider as a merchant that it would have been at any time possible to completely fulfill the trade meaning of the term bindings without including these goods?

A. No.

By Counsel for the Government:

Q. What other class of goods do you say the term bindings includes?

A. Well, tapes, in linen, cotton, half silk or silk. Anything that is used for binding a seam. [476]

Q. You say tapes is a term that also means the same general class?

A. Yes, sir.

Q. What other goods—if you got an inquiry for with the plain term bindings?

A. Well, tape is used for that purpose; galloon is used for that purpose; taffeta ribbon is used for that purpose.

Q. That is a very general term, is it not?

A. Binding is a pretty general term.

Q. You cannot tell without a more exact description, I suppose, whether they meant a galloon or tape or featherstitch braids or what was meant?

A. Oh, they would have perhaps to specialize. [477]

Q. They would have to specialize before you could tell?

A. Certainly.

By COUNSEL FOR THE IMPORTER:

Q. Is it not true that they would have also to specialize if they wanted featherstitch braid to show just what they wanted?

A. Yes, sir.

160 By COUNSEL FOR THE GOVERNMENT: [478]

Q. And when you say that, you mean they would have to indicate the pattern numbers of what they wanted?

A. No, the article.

Q. How can they do it unless they use some patten number?

A. They would ask for some binding and featherstitch braid; they would designate just what they wanted.

Q. If you had an inquiry for featherstitch braid you would understand by that binding with embroidery on?

A. Yes, sir. [479]

Q. Now, you were asked if they wanted featherstitch braids, whether they would not have to specialize further, and you said they would?

A. Yes.

Q. And you meant by that they would indicate the pattern number?

A. No, sir.

Q. What more specific term than featherstitch braids would the customer use in asking for that article?

A. That is all, they don't ask any further.

Q. So then they don't specialize any further than that? [480]

A. No, samples will be put before them to make their selection.

Q. And they indicate the pattern numbers which they want?

A. Yes, sir.

By COUNSEL FOR THE IMPORTER:

Q. If a man asks you for bindings can you or can you not forthwith put samples before him and let him select the pattern he wants?

161 A. Not if he asks for bindings. There are different [481] classes of bindings, as I said before, and one of those class of bindings may be featherstitch braids.

Importer rests.

FRANK E. STOCKUM, called as a witness and having been duly sworn, testified as follows:

By COUNSEL FOR THE GOVERNMENT:

Q. What is your occupation?

A. Buyer.

Q. For whom?

A. George Borgfeldt & Company. [482]

Q. How long have you been with the firm of George Borgfeldt & Company?

A. Some four years—a little over.

Q. Where were you prior to that time.

A. With A. J. Hague & Company.

Q. What were your duties with that firm?

A. The same occupation.

Q. What class of articles do you buy?

A. Buy notions of all kinds and small wares.

Q. Do you go abroad to buy these things sometimes?

A. Yes, sir.

Q. Buy some notions in this market, also? [483]

A. Also in this country.

Q. Sell them in this country as well?

A. Yes, sir.

Q. Is there an article which your firm handles known as featherstitch braids?

A. Well, it may be known as such, but not bought as such.

Q. Just answer the questions as responsively as you can, and then you can make any explanation you desire. Do you handle such article for your firm or is there any such article in trade?

162 A. There is an article branded as featherstitch braid. [484]

Q. Have you got a sample of such an article with you?

A. Yes, sir; I have.

Q. Is this a sample of the article to which you refer?

A. Yes, sir.

Q. And with the label on the goods in the condition in which they are imported?

A. No, sir; what do you refer to?

Q. To the label?

A. That label is on there.

Q. When it is imported? [485]

A. Yes, sir.

Q. Is that the usual label which these goods have?

A. No, sir.

Q. How does it differ?

A. Sometimes—you have another in your left hand.

Q. What does that say?

A. The word on there says featherstitch braids, but we don't buy these goods as featherstitch braids.

Q. How do you buy them?

A. Buy them as cotton binding.

Q. Do you order them that way? [486]

A. We order them that way, buy them that way as such, and sell them as such.

Q. How are they invoiced by you?

A. As bindings.

Q. Is that true?

A. Well, in our case it is. I cannot vouch for others, but I believe bindings is the way they are invoiced.

163 Q. Do you undertake to say that the term bindings is more frequently used in your invoices than featherstich braids? [487]

A. Yes, sir.

Q. That is true, is it?

A. Yes, sir.

Q. Featherstitch braids is one of the names under which they are known commercially?

A. That's about the idea.

Q. Whether or not it is true when you sell these goods they are known generally as featherstitch braids?

A. They are known as such, but we bill them as bindings.

Q. Do you ever bill them as featherstitch braids? [488]

A. Well, occasionally. However, the label may read——

Q. Whether or not it is not true that, generally speaking, you bill them as featherstitch braids?

A. Rather.

Q. How long have you been handling, with one firm or another, this particular line of goods?

A. For probably eight or ten years.

Q. During that time has their commercial name been the same?

A. Yes, sir.

Q. Referring to the label on the goods which you hold in your hand there, is it true that that label stays with the goods until they get into the hands of the retail dealer? [489]

A. Yes, sir.

(Sample referred to is offered in evidence as an illustrative exhibit, admitted and marked "Illustrative Exhibit A, 49670–F, etc.")

Q. You see the invoices of these goods from time to time, I suppose?

A. Most always.

164 Q. And do you think you can produce an invoice [490] of these goods where they are billed as bindings?

A. I presume so; yes, sir.

Q. You have seen them frequently?

A. Yes, sir.

Q. So that you can do it?

A. I shall direct my house to do so.

By COUNSEL FOR THE IMPORTER:

Q. I understood you to say that since you have been dealing in these goods they have been designated in the markets of this country sometimes by the name of braids, sometimes by the name of binding, both terms in vogue? [491]

A. Yes, sir.

Q. Can you mention any other word or term which has commercially prevailed in the trade?

A. As I said, herringbone.

Q. Ever hear them called tapes?

A. Seam tapes.

Q. Ever hear them called seam binding?

A. No, sir.

Q. Only binding without the preliminary word "seam"?

A. Yes, sir.

Q. Ever hear them called webs or webbing?

A. Not to my knowledge; no, sir. [492]

Q. In what size pieces has your house imported or dealt in these goods?

A. Four and six yard pieces.

Q. Always wrapped on a card?

A. Yes, sir.

By COUNSEL FOR THE GOVERNMENT:

Q. Do they ever come in parcels without a core or card; just in a skein?

A. No, sir; not bulk.

165 By COUNSEL FOR THE IMPORTER: [493]

Q. Not in your experience?

A. No.

DANIEL WEILLER, called as a witness, having been duly sworn, testified as follows:

By COUNSEL FOR THE GOVERNMENT:

Q. Are you a member of any firm?

A. Weiller & Sons.

Q. What is their business?

A. Importers of small wares.

Q. How long have you been engaged in that business?

A. Over twenty years. [494]

Q. Is there an article commercially known as featherstitch braids?

A. Yes, sir.

Q. You handle such an article?

A. Yes, sir.

Q. Have you been during the time you have been in business?

A. Yes, sir.

Q. By the way, have you ever testified in this case before or one similar to it?

A. I have testified in a number of these cases.

Q. Can you produce a sample of the article?

A. I have one with me. [495]

(Witness produces a sample which is offered in evidence, admitted and marked "Illustrative Exhibit B.")

Q. This is the way in which you import these goods?

A. Yes, sir.

Q. And the way in which you sell them to the retail trade?

166 A. Wholesale trade. [496]

Q. Are the goods you import of this character usually invoiced in this manner?

A. Yes, sir.

Q. That is, as featherstitch braids?

A. Yes, sir.

Q. That is the name they are usually sold by?

A. Well, one of the names.

Q. That is the name they are usually sold by, I mean?

A. They are sometimes sold by that name.

Q. Do you say that is not the name they are usually sold by, then?

A. Well, yes, it is the name. [497]

Q. Do you know of a name which expresses more exactly this class of articles than the term featherstitch braids?

A. No, sir.

Q. You have been dealing in these, you say, for twenty years?

A. Yes, sir.

Q. During that time has the commercial name changed or has it been the same, do you say?

A. The same.

Q. Did you import these articles prior to 1890?

A. I don't remember exactly the date when they came into vogue—somewhere around that time. [498]

By COUNSEL FOR THE IMPORTER:

Q. You testified that the name or term featherstitch braid is a name or the names by which these articles are usually sold. By what other name or names are they sold in the markets of this country?

A. Seam binding, binding tape.

Q. How long have they been sold under all these names in the market?

A. Ever since the article has been in use.

167 Q. Since a time safely prior to 1897, at all events? [499]

A. Certainly prior to that.

Q. If you had an inquiry for seam bindings in the regular course of business, say whether you would include or exclude the article you have been testifying about in your response?

A. Include the articles.

Q. Can you say from an examination of these goods whether they were produced by the braiding or weaving processes?

A. Yes, sir.

Q. Say?

A. They were produced in a loom. [500]

Q. Does that comport with the idea that they are produced by the braiding process or the weaving process?

A. No; the loom is a weaving process.

Q. You handle a wide variety of braids in your business, do you not?

A. I don't think we handle—very few braids, hardly any.

Q. And such braids as you do handle, what is the usual method of fabrication?

A. They are made with the braid machine.

Q. Is the result in the way the threads are laid in the web*b* of the goods different from the way they are made in a loom? [501]

A. Entirely different.

Q. Say whether according to that test the article you have produced a sample of here is a braid or a tape?

(Objected to by counsel for the Government as being immaterial. Objection overruled.)

A. It is a tape.

168 Q. In what form—that is to say, as to the size of the pieces and the method of putting up, have [502] you handled these featherstitch goods you are testifying about?

A. We have handled them in various lengths.

Q. Up to what greatest lengths in a piece?

A. Up to 432 yards in a piece.

Q. Please state in the case of these long lengths of over 50 yards how the goods were put up?

A. Rolled on wooden or paper spools.

Q. In that case did they bear any labels?

A. No; simply a small label, "Made in Germany."

Q. But no label undertaking to designate the goods by one or another title? [503]

A. No, sir.

Q. As to the goods put up into the shape of long spools, the long lengths, are they not rather for the wholesale and manufacturing trade or the retail trade?

A. Those are for the manufacturing trade who don't resell them and don't care for labels.

Q. Which consumes the greatest quantity of these goods according to your experience?

A. Oh, I think there are more of the larger pieces.

Q. What I meant was, taking the total trade?

A. I cannot give any estimate on that.

Q. Examine the Exhibit 1 in this case and say [504] whether your importations are fairly represented by that line of patterns?

A. Yes, practically, only there are too many with this featherstitch business.

Q. "Featherstitch" in your last answer refers to the little loops to the edge of the article?

A. Yes, sir.

Q. I understand you to say that yours for the most part have no such finish as that?

A. Only a small proportion, very small.

169 Q. The rest being finished with plain edge selvage? [505]

A. Yes, sir.

Q. Are any of your featherstitch goods, whether designated as braids, bindings, or otherwise, produced by braiding—those imported by you?

A. Yes, sir.

Q. Can you designate which ones?

A. Well, we can, by the price. Only one or two numbers in the entire invoice.

Q. That is how many out of what total?

A. Out of five thousand.

Q. One or two numbers out of five thousand?

A. Yes, sir. [506]

ADOLPH KELLER, called as a witness and having been duly sworn, testified as follows:

By COUNSEL FOR THE GOVERNMENT:

Q. With what firm are you connected?

A. Dickerhoff, Raeffloer & Company.

Q. And what is your position there?

A. Customhouse clerk.

Q. And what line of goods do they handle or carry?

A. Notions, small wares, tailors' trimmings.

Q. And you do their customhouse business? [507]

A. Yes, sir.

Q. Restrict your duties to that?

A. Not wholly.

Q. What else do you do?

A. I have made copies of the orders for merchandise in my experience there, and I have been with them twenty years.

Q. How long have you been customhouse clerk?

A. Pretty near all that time—handled all their invoices within that specific period.

170 Q. Do they import a class of goods known as featherstitch braids? [508]

(Counsel for the importers object to the question being asked this witness, unless distinctly limited to the way they are known in the sense of being designated on the import invoices.)

COUNSEL FOR THE GOVERNMENT. Limited to his orders.

WITNESS. I have also sold them in the store.

Q. Have you got a sample of that class of goods?

A. Yes, sir. [509]

(Witness produces a sample and says this is a sample of one of the ways it is put up.)

Q. Does that fairly represent the class of goods?

A. Yes, sir.

Q. So far as you see them as customhouse clerk?

A. Yes, sir.

Q. Are they usually imported in that manner?

A. Not wholly, no. They come in 4, 6, 9, 12, 24, 32, or 432 yards.

Q. But that class of goods for the retail trade comes in this manner? [510]

A. Yes; that is a six-yard piece.

Q. That is the way it goes to the retail trade?

A. Yes, sir.

(Sample is offered in evidence, admitted and marked "Illustrative Exhibit C, 49670–F, etc.")

Q. Are they invoiced in the same way they are put up?

A. They are called featherstitch braids in the invoice.

171 Q. Is it true they are usually sold and billed as featherstitch braids? [511]

A. No.

Q. How are they usually known?

A. Well, they use in my experience with those goods all kinds of names—herringbone binding, seam binding, featherstitch braids, finishing braid, finishing tape, finishing binding—in fact, the three words are synonymous with this class of goods, tape, binding, or braid.

Q. Either one you think would describe them?

A. I have ordered the goods as seam binding and they would come invoiced as featherstitch braids. [512]

Q. Do you know of any other term which describes this class of goods any more exactly than featherstitch braids?

(Objected to as being immaterial and irrelevant. Objection overruled.)

A. I think the term seam binding is used just as frequently for this class of goods as the term featherstitch braid.

Q. I don't think you quite understand the question. Do you know of any other term which describes this class of goods any more exactly than featherstitch braids?

A. Seam binding. [513]

Q. Do you think that describes it more exactly?

A. More explicit I would call it web finishing tape.

Q. Is that term usually employed?

A. No; it is not usually employed.

Q. Is there any term more usually employed than the term featherstitch braid that you know of?

A. No. That is, featherstitch braid is really a foreign name.

172 When these goods were first made and brought to this country they were known as [514] finishing tape. Featherstitch braid was given by the foreign manufacturers afterwards.

Q. Where, as far as your experience goes, are most of these goods manufactured?

A. They are all made in Germany, in Barmen.

Q. Right near Langerfeld?
A. Yes; there is railroad connection between the two cities.
Q. These labels are printed in Germany?
A. Yes, sir.
Q. They are printed for use in the American market?
A. Yes, sir. [515]
Q. In your experience has the commercial designation of this class of merchandise changed or has it been the same thing?
A. Well, in one sense, as I say, the article is known variously under these different terms. If we order finishing tapes they would send us featherstitch braids; or we might order so many gross of seam binding and they would come in as featherstitch braids.
Q. Invoiced that way?
A. I believe they would invoice them so; it is a foreign term.
Q. Have you ever bought these goods in Barmen? [516]
A. No, sir; I have never bought them; have ordered them.
Q. Your firm sells to retail stores?
A. We do not.
Q. Just to wholesalers?
A. Yes, sir.

By COUNSEL FOR THE IMPORTER:

173 Q. Mr. Keller, I think you testified on your direct examination that these articles come in some [517] times put up in little hanks as we see here (Exhibit C) and sometimes put in quantities of over 400 yards—in what form were the 400-yard pieces put up?
A. They were on pasteboard spools or wooden spools.
Q. Wound round and round like thread?
A. Sometimes just wound around a piece of cardboard.
Q. In those cases of these long lengths do they bear any labels on them?
A. No; not any more than to give the number of gross yards and the country of origin. [518]
Q. And no name?
A. No, no name.
Q. Those go to the wholesale trade more distinctively than these short pieces?
A. To the manufacturing trade.
Q. Do they form a considerable part of the total importation in your experience?
A. Oh, yes.
Q. You have testified to this label as shown on the Illustrative Exhibit C, and in answer to the question of the Government counsel you said it was made for the United States. Have you any knowledge as to whether the goods are identically labelled for England or not? [519]
A. I have not.

Q. For all you know they may be made for England as well as the United States, may they not?

A. Why, sure.

Q. When you testified that upon your own orders for seam bindings they had sent them as featherstitch braids, who did you mean by that?

A. Manufacturers.

Q. Abroad?

A. Yes, sir.

174 Q. And am I to understand from your testimony, [520] so far as the designation that prevailed between buyers and sellers in this country is concerned, these goods were equally well and have been designated either as featherstitch braids, seam bindings, or as finishing tape?

A. As they come into the store and want herringbone binding we take them right down and show them featherstitch braids.

Q. That practice is how old?

A. Ever since these articles have been in existence.

Q. Can we safely say the practice was in vogue prior to 1897? [521]

A. Oh, yes.

AINSWORTH J. HAGUE, called as a witness and having been duly sworn, testified as follows:

By COUNSEL FOR THE GOVERNMENT:

Q. What is your occupation?

A. Importer and dealer in domestic small wares, notions.

Q. What is your firm style?

A. A. J. Hague & Company, incorporated.

Q. You are a member of that corporation? [522]

A. Yes, sir.

Q. For how many years have you been engaged in that business?

A. About seventeen or eighteen years.

Q. During that time have you handled an article known in trade and commerce of this country as featherstitch braids?

A. Not always known in this country as featherstitch braids, no.

175 Q. Well I will modify my question so far as [523] asking you whether known sometimes in this country as featherstitch braids?

A. Yes, sir.

Q. Have you got a sample of such goods with you?

A. Yes, sir.

(Witness produces a number of samples of which counsel for the Government offers two in evidence. Admitted and marked respectively, "Illustrative Exhibit D and Exhibit E, 49670–F, etc.")

Q. What are these articles used for generally?

A. Used for bindings. [524]

Q. A little more exactly, what class of goods?
A. Underwear and night shirts.
Q. Binding seams, to cover seams?
A. To cover seams, yes, sir.
Q. Has the name or names under which they have been known in trade and commerce of this country changed during the time you have been familiar with them, or have they remained the same?
A. They have remained the same.
Q. And you imported these goods prior to 1890 or handled them?
A. Yes, sir, about that time. [525]
Q. The goods usually come invoiced to you as featherstitch braids?
A. Finishing braids sometimes they are designated, featherstitch braids and bindings.
Q. In your invoices?
A. Sometimes.
Q. How are they invoiced?
A. Sometimes there is no designation on the invoice.
176 Q. Just the pattern number? [526]
A. Just simply give the numbers.
Q. Do you happen to know of any name which describes this class of goods more specifically than the term featherstitch braids or finishing braids?
(Counsel for the importers makes the same objection as in the case of the previous witnesses; same ruling.)
A. Yes, sir.
Q. What is it?
A. Webbing.
Q. Webbing?
A. Webbing. [527]
Q. You think that describes it more exactly?
A. Among domestic manufacturers.
Q. How are this class of goods usually ordered in trade and commerce, so far as your experience of seventeen or eighteen years goes?
A. Does your question refer to domestic manufacturers or foreign manufacturers?
Q. In this country?
A. Webbing.
Q. That is the term usually employed?
A. Among domestic manufacturers, yes, sir.
Q. How about the retail trade?
A. In the retail trade I believe there are other designations. [528]
Q. Do you sell to the retail trade?
A. I have averaged one customer—possibly one out of twenty or one out of ten.
Q. The great bulk of your customers are manufacturers?
A. No, mostly the wholesale jobbing trade.
Q. How do they order?
A. Under various designations.

Q. Which is the most general one that you know of?

177 A. Binding. [529]

Q. We have the one most generally, now what is the one most usually employed?

A. I can not say which is the most prominent on the orders which come into the house, but I should judge myself it is bindings.

Q. You testified a moment ago that you thought the term webbing was more exact and more specific term—would an order for webbings describe this class of goods to your mind and no other class?

A. To a domestic manufacturer it would be understood.

Q. Would an order to you for webbing describe this class of goods and no other goods? [530]

A. It would refer to other goods as well.

Q. It would?

A. Yes, sir.

Q. So if an order came to you for webbing, is it true you would have to send in response samples of other things you know as webbings?

A. I should write to the party inquiring for webbings as to what article and kind he wishes.

Q. You would not know without any such inquiry?

A. I would inquire.

Q. Is it true if you got an order for featherstitch braids of finishing braids you would understand [531] without further inquiry that the customer wanted a class of goods similar to the merchandise which you have produced here to-day?

A. If he ordered featherstitch braids, we should ask whether he wanted binding for finishing or edge.

Q. But you have both here, have you?

A. Yes, sir.

Q. So, it is true, coming back to my question once more, that

178 if a customer ordered featherstitch braids or finishing braids you would understand [532] he wanted a class of goods covered by the two samples you produced here?

A. Covered by these (referring to Exhibits D and E).

Q. Is it true if a customer came to you and asked you for bindings you have to inquire what variety or grade of bindings he wanted?

A. No, sir.

Q. What would you understand by such an inquiry?

A. I would understand by the use of the word binding he wanted what is designated in the foreign countries as featherstitch braids. [533]

Q. You say "designated in foreign countries"—is it true the term featherstitch braid is not used in this country at all?

A. Yes; it is used in this country.

Q. The term is one that is used in this country as well as in foreign countries. Do you handle any other class of so-called bindings than these articles here represented by the samples you have in your hand?

A. We have what is called silk tafetta binding.

Q. What is that used for?

A. Binding seams and ornamenting possibly corsets and underwear.

Q. Anything else that you handle that answers [534] to the name of bindings?

A. Not as I am aware of.

Q. So if you got an order for bindings, is it true that unless the customer indicated, you would not know whether to send him the article similar to Exhibits D and E, which you hold in your hand, or the articles which you have just described as silk taffeta binding?

A. I would sell them what is designated on these labels as finishing braid.

179 Q. Well, the silk taffeta goods are also known as bindings? [535]

A. They are always invariably designated as taffeta binding.

Q. And they are never ordered any other way—is that right?

A. Not to my knowledge.

Q. Are these ever ordered as tapes?

A. Not among foreign manufacturers.

Q. In this country?

A. In this country they are ordered as tapes as well as webbing and web.

Q. If you got an order for webbing or tapes, would you know exactly what was indicated without an item or pattern number? [536]

A. Yes, I would.

Q. Do you handle any other variety of so-called tapes or webbing except the class of goods represented by Exhibits D and E?

A. With the exception of taffeta binding.

Q. No other?

A. Not to my knowledge.

Q. Do you handle suspender webbings?

A. No, sir.

Q. Garter webbing?

A. Yes, we handle garter webbing.

Q. That class of goods ordered as webbing sometimes? [537]

A. Ordered as loom webbing or lisle webbing.

Q. If you got an order for webbing, would you send the customer samples of the garter webbing as well as the finishing braids and the taffeta braid?

A. If the party was in the wholesale jobbing trade I would send him samples of elastic webbing; if a manufacturer, where they used webbing on undershirts and underwear, I would send him

180 samples of articles of this character as I hold in [538] my hand (Exhibits D and E).

Q. But without knowing for what purpose the articles were intended, is it true that you would send him all these different things?

A. I can always designate what kind of goods he wanted as to what business he was engaged in.

Q. In the absence of any knowledge as to that?

A. I never had them come——
Q. Would a jobber handle all these different things?
A. No, the manufacturer.
Q. Would a jobber handle all these different articles? [539]
A. Yes, sir.
Q. So, if you got an order from a jobber you could not tell, I suppose, whether he wanted suspender webbing or garter or what you call elastic webbing or taffeta webbing or this finishing braid, webbing so-called?
A. If it was a party doing business—notion business—I would send him samples of garter; if a manufacturer of underwear——
Q. I am talking about the jobber now.
A. I would send him samples of the elastic.

By COUNSEL FOR THE IMPORTER:

Q. Have you dealt in a considerable variety of [540] braids in your commercial experience?
A. No, sir.
Q. You don't handle different classes of braids?
A. Not a general line; no, sir.

MORRIS STEINHARDT, called as a witness and having been duly sworn, testified as follows:

By COUNSEL FOR THE GOVERNMENT:

Q. With what firm are you connected?
A. A. Steinhardt & Bro.
181 Q. Are you a member of the firm? [541]
A. Yes, sir.
Q. What is their business?
A. Importers.
Q. Of what?
A. Small wares, notions, fancy goods.
Q. Do you handle an article sometimes known in trade and commerce as featherstitch braids?
A. Sometimes, yes.
Q. How long have you been handling such article?
A. Since I have been there, fourteen years I have been connected with them.
Q. Did you bring a sample of them? [542]
A. Yes, sir.
(Witness produces a sample which is offered in evidence, admitted, and marked "Illustrative Exhibit F.")
Q. The goods are usually invoiced this way, featherstitch braid (referring to label on sample)?
A. Yes, sir.
Q. Usually labelled that way?
A. Yes, sir.
Q. That is the way they go to the retailer?
A. Yes, sir.

Q. Do you know of any name which describes [543] them more specifically than the term featherstitch braid?

(Same objection as before by counsel for the importers; same ruling and exception.)

A. Seam bindings or seam coverings.

Q. Is the term seam binding restricted to this class of goods?

A. No, sir.

182 Q. What other class of goods is described by that term? [544]

A. Taffeta ribbons.

Q. So you would not know if a customer asked you for seam binding whether he wanted taffeta ribbon or this?

A. In a great many cases they order this as seam binding.

Q. If a customer asked you for seam binding I suppose you would not know whether he meant this article featherstitch braid, or taffeta braid?

A. In most cases we would know.

Q. In the absence of any intimation from him you would know, you think? [545]

A. Most cases.

Q. By what sign or token would you know?

A. If he wanted them fancy or plain.

Q. Because he described them?

A. Yes, sir.

Q. If he did not describe them?

A. Sometimes we would have to ask.

Q. You would have to ask in that case unless you knew who he was?

A. Yes, sir.

Q. Does the term featherstich braid include any other class of articles than this class generally represented by the sample you produced here?

A. No, sir; just different in pattern. [546]

Q. Represented by them, is it not?

A. Yes, sir.

Q. During the years you have been in business, Mr. Steinhardt, has the commercial trade name for these articles changed or has it been about the same?

A. Just about the same.

Q. And that goes back to 1890 or prior thereto?

A. Yes, sir.

183 By Counsel for the Importer: [547]

Q. Mr. Steinhardt, I understood you to testify that you have personal trade experience with this class dating all the way back to 1897?

A. Yes, sir.

Q. Please state each and every name which in the usage of the trade in this country prior to 1897 was employed to designate these goods.

A. Seam binding, seam coverings, seam tape, herringbone, and featherstitch braid.

Q. Now, taking the term "binding;" had that term an established meaning in your trade prior to 1897?

A. Yes, sir. [548]

Q. Did it designate or refer to a distinct class of articles which the trade knew when they heard the term?

A. Yes, sir.

Q. Say whether that established meaning of the term binding could have been fulfilled without including this class of articles in it—according to the trade practice, could you have fulfilled the meaning of that term without including this article?

A. No, sir.

Q. In your experience have you known of the article being imported otherwise than in these little card bundles? [549]

A. Yes, sir.

Q. How otherwise?

A. In bulk. In 36-yard pieces, 144-yard pieces, or 432-yard pieces on rolls.

Q. All three?

A. All three of those lengths on pasteboard rolls.

Q. Do those rolls bear labels?

A. No, sir; just the measurement, and "Made in Germany."

184 Q. A statement of the number of yards and the [550] words "Made in Germany?"

A. Yes, sir.

Q. Is the importation of the goods in that form which you have now described an important element in this class of goods?

A. Yes, sir.

Q. And is the trade in those long lengths on rolls more distinctly wholesale or retail?

A. Manufacturing trade.

Q. Bought by them in wholesale quantities?

A. Yes, sir.

Q. Does your house carry a considerable variety of braids? [551]

A. Yes, sir.

Q. And how long has it?

A. Fancy braids during the last five years.

Q. Fancy or others, what is the greatest length of time during which you have carried braids commercially?

A. About five years.

Q. You did not carry them prior to 1897?

A. We may have; but I can't say certainly.

Q. What is the common characteristic, if any, of braids?

A. Braids are generally fancy articles made of different materials than this article is [referring to the exhibits]. [552]

Q. Is there any one method of manufacture showing in the result which is the common characteristic of braids?

A. They are made on different machines.
Q. You mean different from this featherstitch?
A. From this featherstitch.
Q. Can you, from examining the resultant product, say what machine braids are made on?
A. I have not enough knowledge in this line of braids to be a witness on that point, really.
185 Q. Have you examined what we may call the [553] web or structure of threads in the braids?
A. No, sir.

By COUNSEL FOR THE GOVERNMENT:

Q. You have stated that an order for various kinds of bindings would not be complete without including goods similar to these illustrative exhibits?
A. Yes, sir.
Q. What other class of goods besides these would you include in such order?
A. Taffeta bindings.
Q. What else? [554]
A. Russian bindings.
Q. What are they?
A. Silk bindings.
Q. Used for what?
A. For seams—covering seams.
Q. What else?
A. Those are about the principal items we would include.
Q. Do you handle any other binding of cotton fibre?
A. No, sir.
Q. Do you handle carpet binding?
A. Yes, sir.
Q. Would you send a sample of carpet binding? [555]
A. No, sir.
Q. Why not?
A. A different article.
Q. How different, commercially?
A. It is used on carpets.
Q. Yes; but it is a variety of binding, is it not—carpet binding?
A. Yes——
186 Q. So if you had an order for bindings without knowing for what purpose those bindings were intended, [556] that order would not be complete unless you sent a sample of carpet binding?
A. We would not send carpet binding.
Q. Why not, if you didn't know for what purpose?
A. It is different from this line.
Q. It is known as carpet binding, is it not?
A. Yes; but it is very little used.

By COUNSEL FOR THE IMPORTER:

Q. You are selling these goods generally throughout the United States?

A. Yes, sir. [557]

Q. Receive orders for them every day?

A. Yes, sir.

Q. How do those orders that come to you generally describe this article illustrative Exhibit F?

A. Send us one or so many sample books of six yard seam binding.

Q. What do you send them?

A. This line of goods.

Q. Anything else at all?

A. No, sir. Those are mostly put up in four and six yards.

Q. If they failed to say "six yards." what do you send?

A. Sometimes we would have to inquire. [558]

Q. In that case you would have to inquire?

A. Yes, sir.

PHILIP J. KRACKEHL, called as a witness and having been duly sworn, testified as follows:

By COUNSEL FOR THE GOVERNMENT:

Q. With what firm are you connected?

A. Mills & Gibb.

187 Q. In what capacity? [559]

A. Assistant buyer and manager in the notion, fancy goods, and trimming department.

Q. How long have you been with them?

A. About twenty-five years.

Q. You testified, I believe, in this controversy before?

A. I don't know whether it is the same one or not.

Q. Does your firm handle a class of goods known as featherstitch braids?

A. Yes, sir.

Q. Have you got a sample of such goods?

A. Yes, sir. [560]

Q. Where are they purchased principally?

A. In Barmen, Germany.

Q. Mostly of German origin?

A. Yes, sir.

Q. Do you buy in England?

A. No, sir.

(Sample produced by the witness is offered in evidence, admitted, and marked "Illustrative Exhibit G.")

Q. Are they usually invoiced as they are labelled?

A. I can't say. I cannot recall the way they are invoiced. [561]

Q. You don't see the invoices?

A. I see the invoices but I cannot recall at present whether they are invoiced as cotton trimming or whether they are invoiced as featherstitch braid or as seam binding.

Q. Do you know of any term which describes these goods more specifically than the term featherstitch braid?

(Same objection by counsel for the importer as before; same ruling and exception.)

188 A. No, sir; I do not. [562]

Q. Do you know of any term which describes the goods as specifically as featherstitch braids?

A. Yes, sir.

Q. What is that term?

A. Seam tape, featherstitch binding, seam covering.

Q. Is there any other class of articles besides the class represented generally by this illustrative Exhibit G comprised within the term seam binding?

A. Yes, sir.

Q. What is that class?

A. Taffeta ribbon. [563]

Q. Yes. Anything else that you can think of?

A. Bias tape, sleeve binding.

Q. Anything else?

A. None that I can think of just now.

Q. Do you know any other class of articles except the class generally represented by this illustrative Exhibit G comprised within the term seam tape?

A. No, sir.

Q. You know of no other variety of seam tape than the exhibit—than the class represented by this Exhibit G—is that right?

A. If it was addressed to our department we would take it that this is the article wanted. [564]

Q. Just answer my question.

A. Well, it all depends on what department it goes to. If it went to the ribbon department they would probably take it for taffeta ribbon.

Q. So taffeta ribbon is one form of seam tape?

A. Yes, sir.

Q. Any other form of seam tape?

A. I don't know of any.

189 Q. Now has the commercial designation or designations of this article Exhibit G changed during the time you have been familiar with it? [565]

A. No, sir; not that I know of.

Q. Been the same, has it?

A. Been about the same. I have heard it under different names.

Q. How far back does your recollection go?

A. Well, I don't know—may be fifteen or sixteen years or more—not more, but probably about fifteen years.

No cross-examination.

Hearing adjourned to some date to be mutually agreed upon. [566]

Before the Board of U. S. General Appraisers.

Board No. 2.

IN THE MATTER OF THE PROTESTS OF C. M. VOM BAUR, 49670/2–F, etc. [567]

NEW YORK, *April 28, 1904.*

Before General Appraiser HOWELL.

Appearances: H. J. Webster, Esq., assistant counsel for Treasury Dept.; Albert Comstock, Esq., counsel for the importer.

JOSEPH A. FLAHERTY, called as witness, having been duly sworn, testified as follows:

190 By Mr. WEBSTER: [568]

Q. What is your business, Mr. Flaherty?

A. Manufacturer of ladies' wrappers, kimonos, and dressing sacks.

Q. With what firm are you connected?

A. Joseph A. Flaherty & Sons.

Q. In the manufacture of the goods that you make, do you use the articles represented by Exhibit 1 in this case, which I show you?

A. We use material of this character. It may not be the identical patterns.

Q. Have you any samples here of articles which have been manufactured by you on which material like Exhibit 1 is used? [569]

A. These garments there [pointing to garments on table] belong to me.

Q. What are these?

A. Wrappers.

(Sample wrappers are offered in evidence, admitted, and marked "Illustrative Exhibit M.")

Q. Were these samples made by you in the ordinary course of your business?

A. Yes, sir.

Q. And you sell articles that are made, trimmed, and finished just like these samples?

A. Yes, sir. [570]

Q. You find on these samples, articles like Exhibit 1 in this case?

A. Yes, sir.

Q. Differing in pattern and colors?

A. Yes, sir.

Q. Will you please look at these samples of wrappers, and tell us whether the articles like Exhibit 1 are applied on the seams entirely, or partly on the seams and partly in other places?

(Objected to by counsel for the importer as immaterial and irrelevant. Objection overruled; exception.)

191 A. Partly on the seams and partly in other places. [571]

Q. You buy these articles like Exhibit 1, do you?

A. Yes, sir.

Q. What do you call them when you buy them?

By Mr. COMSTOCK:

Q. How long have you been buying such articles as you are testifying about?

A. As an individual or a firm?

Q. You personally buying them in any capacity?

A. I usually oversee a young woman in my employ who is a buyer, and don't buy at the start of the season without my permission. Duplicate orders she buys. [572]

Q. The one who comes into contact with the stocks where these goods are for sale and the people who sell them is the young woman, and not you?

A. Not necessarily.

Q. Is it as a matter of fact correct?

A. No, sir.

Q. Are you the one who has the contact with the sellers?

A. I usually see them every time they come into my place.

Q. What kind of houses do they represent?

A. Recently we have been using more goods of a domestic character than the imported. [573]

Q. Please answer the question I asked you first—how long is your personal experience in buying or taking part in buying?

A. Twelve years.

Q. What part of the buying does the young woman do, since you say that you meet the sellers and take part in the transactions?

A. To explain to you I would have to go into details to explain my business.

192 Q. Can't you answer that question shortly by [574] saying what part she takes in the matter?

A. Whether she trims up the work?

Q. What part in the buying of these goods like Exhibit 1 does the woman do?

A. She places duplicate orders.

By Mr. WEBSTER:

Q. Duplicate orders for the same patterns which have been purchased before?

A. Yes, sir.

Q. (Answering question before Mr. Comstock's cross-examination.)

A. Featherstitch braid. [575]

Q. Is that the name by which you designate them in ordering?

A. Yes, sir; that is the only name we designate them by.

Q. Do you buy these from wholesale houses?

A. We buy them from importers and from manufacturers.

Q. Has there been any difference in the name that you have used in addressing orders to different houses, importers, or manufacturers?

A. No; I don't believe there has, sir.

Q. Now, as a manufacturer of garments, will you please state the purpose for which these featherstitch braids are applied? [576]

(Objected to as immaterial and irrelevant, and on the further ground that the garment bearing the article in question having been introduced as an exhibit, it speaks for itself as to the purpose to which the substance is applied. Objection overruled; exception.)

A. The trimming.

Q. Please state whether these featherstitch braids are ap-
193 plied on the outside of the garment, as a general proposition now—not merely these exhibits. [577]

A. On the outside only.

Q. In the course of your business experience, have you ever made a garment with these braids applied on the inside?

A. No, sir.

Q. You said that these braids are applied partly on the seams and partly in other places. Taking the general use of such braids as this on the garments that you make, which would be the principal use, on the seams or in other places?

(Same objection as above—same ruling. Exception.) [578]

A. These garments here represent only a very small part of the various styles and ways that we use this trimming. We use it over seams, we use it on reverses where there are no seams, and use it across yokes.

Q. Now, can't you at least estimate which use would consume the most braid—whether on seams or in other places?

A. That would depend entirely on the style of garment, sir.

Q. Give us an estimate, taking your business as a whole? [579]

A. I am inclined to think that there is more used on the seams than otherwise.

Q. In making these garments [pointing to Exhibit M], do you bind the seams or any part of them?

A. Yes—inside we bind the seams and then again we fell them in other garments.

Q. Can you show among these exhibits (Exhibit M) some that have a binding on them?

194 A. This garment has a binding (referring to the light-colored garment in Exhibit M, and to the [580] seam around the arm holes).

Q. Do you buy material like this narrow piece of fabric that appears around this arm hole?

A. We don't buy it in that state. We buy it and make it ourselves.

Q. Can you give me the names of any importing houses from whom you have bougth featherstitch braids?

A. S. B. D. Yongh; Dieckerhoff, Raffloer & Co.; I have bought from A. Steinhardt, but not very recently. I guess that is about all that I remember.

Q. In your dealings with those houses, have [581] those articles like Exhibit 1 ever been known or designated as anything else but a featherstitch braid?

A. I have only known them as featherstitch braids?

Q. Is that the term that you have uniformly used in ordering from the firms you have mentioned?

A. Yes, sir.

Q. And have you also brought featherstitch braids from the Sanford Narrow Fabric Co.?

A. Yes, sir.

Q. Is there any difference commercially or in the use between the braids you have had from [582] them and the braids you have had from importers?

A. (No answer.)

Q. Is there any difference in the uses to which they are applied?

A. Not by us.

Q. Do they belong to the same commercial class of goods?

A. Yes, sir.

195 Q. As to the statements you have made, would [583] they be equally true of a period prior to July 24, 1897?

A. Yes, sir; with the exception that we did not buy any goods from the Sanford Narrow Fabric Co. prior to that or about that time.

By Mr. COMSTOCK:

Q. How old are you, Mr. Flaherty?

A. 32.

Q. What were your personal functions in the business you were connected with on and before July, 1897, which was seven years ago?

A. I was partner with a man by the name of Green, under the designation of Green & Flaherty. [584]

Q. Making the same goods as now?

A. The same class of goods as now; yes, sir.

Q. As largely as now?

A. No.

Q. Was that just about the beginning of the concern?

A. Our firm was formed in August, 1892.

Q. How large quantities of these goods like Exhibit 1 are you prepared to swear that you had personally bought per annum prior to 1897—stating by values?

A. I don't believe I could give you an answer.

Q. Are you prepared to answer that you had bought $10,000 worth of them? [585]

A. No, sir.

Q. Are you prepared to swear that you had bought $1,000 per year of them?

A. Yes.

Q. Will you swear that you bought $2,000 a year worth prior to that?

A. I cannot commit myself to facts and figures.

Q. Then you will not swear that you bought $2,000 worth a year prior to that?

196 A. I won't swear yes or no. [586]

Q. Do you know or do you not, that the articles like Exhibit 1 in this case are in fact braids at all? Is that within your knowledge, or not within your knowledge?

A. I have always known them as featherstitch braids.

Q. Did you ever hear the term herringbone applied to them?

A. Yes, I have.

Q. Did you ever hear the term finishing tapes applied to them?

A. No, sir.

Q. Did you ever hear the term seam binding applied to them? [587]

A. No, sir.

Q. Did you ever hear them called herringbone?

A. Yes, sir; but more commonly called featherstitch braids?

Q. You stated in answer to the question of the Government counsel when your attention was called to this stitched welt, as I may term it, of plain white goods upon the inside of this garment [picking up white garment] where the sleeve joins the body, that you have not purchased it in the state shown here, but have bought something and made it up into this shape. Now, in what shape or condition was the thing which you refer to as having been bought by you? [588]

A. A piece of lawn.

Q. Ordinary piece goods?

A. Piece goods; yes, sir.

Q. Applied in such quantities as necessary to supply the space and stitched on?

A. We strip them into narrow strips and then fold them.

197 By Mr. WEBSTER: [589]

Q. When you were speaking of the quantity of braids bought by you, you were confining that to purchases made by you personally, were you not—and not to purchases made by your firm?

A. I was confining to what orders I had placed myself.

Q. You state that you had heard of these featherstitch braids being designated as herringbone. Have you heard them called herringbone trimming?

A. I think it was herringbone braid.

Q. The word herringbone alone, or herringbone braid? [590]

A. Herringbone braid.

Q. You have heard them called herringbone alone without the word braid?

A. No, sir.

Q. From your experience as a manufacturer, would featherstitch braids like these (Ex. 1) be suitable for binding a seam?

A. Inside or outside—no.

Q. In answering the last question what did you regard as binding a seam?

A. What did I regard as binding a seam?

Q. Yes.

A. Why, the inside of a garment. [591]

Mr. COMSTOCK:

Q. Mr. Flaherty, when the Government counsel asked you whether featherstitch braids were fit for binding seams your first response was to ask "inside or outside," was it not?

A. Yes, sir.

Q. What did you mean by that?

A. I misunderstood the question when I answered that. I didn't quite understand what he meant—that is the reason I asked that.

198 Q. There are seams on the outside of garments, [592] aren't there, sometimes?

A. Yes, sir.

Q. Are they ever bound?

A. The term we apply is trimmed.

Q. Are they ever bound in fact?

A. Never bound, as I know.

Q. If you do the same thing on the outside of a garment which on the inside you would call bind- the seam, you call that trimming it, do you?

A. Yes, sir. [593]

G. J. HEAPHY, called as a witness, and having been duly sworn, testified as follows:

By Mr. WEBSTER:

Q. What is your business, Mr. Heaphy?

A. Buyer of notions.

Q. With what firm?

A. Lord & Taylor, Broadway.

Q. How long have you been buyer of notions for Lord & Taylor?

A. Seven years.

Q. Were you in that position prior to July 24, 1897, if you can remember? [594]

A. If I remember correctly, I went there in February.

Q. In February of 1897?

A. February, 1897.

Q. What was your position before that?

A. Assistant.

Q. Assistant buyer?

A. Assistant buyer.

Q. In the same department?

A. Yes, sir.

199 Q. How long were you assistant buyer? [595]

A. Six months.

Q. And before that, were you in the same business?

A. I was up in the wholesale in a clerical position in the office.

Q. Will you please look at Exhibit 1 in this case, and say whether your firm deals in the same class of goods?

A. In the same class of goods; yes, sir.

Q. Very largely?
A. No, sir.
Q. Not very largely?
A. No, sir.
Q. Do you import them? [596]
A. No, sir.
Q. Do you buy them in New York?
A. Yes, sir.
Q. Do you personally attend to that buying?
A. Yes, sir.
Q. Did you July 24, 1897, and about that date, attend to that buying?
A. Yes, sir.
Q. Can you tell us the names of some of the firms you bought those from about that time?
A. The only one I can remember about that time is S. B. D. Yongh.
Q. Have you bought from other people since that time? [597]
A. Yes, sir.
Q. Can you name some of the importers?
(Objected to as immaterial and irrelevant by counsel for the importers. Objection sustained.)
Q. In all of your experience prior to July 24, 1897, what was the general commercial name by which Exhibit 1 was known?
200 A. Featherstitch braids. [598]
Q. Do you know them by any other name?
A. I have known them by other names, but I couldn't say positively whether it was about that date or not. I have heard them since then.
Q. You haven't distinctly separated in your mind, in other words, what occurred prior to that date and what occurred subsequently?
A. No, sir; I have not.
Q. Would you say that you had heard them called herringbone braid before 1897?
A. No, sir.
Q. You mean that you don't want to say, or do you mean that you didn't? [599]
A. I am not positive on that point.
Q. Would your answer be the same as to herringbone trimming?
A. The same, sir.

By Mr. COMSTOCK:

Q. You have been asked, Mr. Heaphy, about having heard these articles designated as herringbone trimming, herringbone braid, and featherstitch braid. Now please enumerate any other names by which you have heard them designated.
(Objection by Government counsel.
General appraiser allows question to be answered provided that it is limited to a period prior to July 24, 1897. Counsel for importers excepts to the instruction of the general appraiser.) [600]
A. (Answer not made.)

Q. Have you ever heard articles like Exhibit 1 designated in the wholesale trade in this country as seam bindings?

(Objection by Government counsel as not calling for the period prior to the tariff act. Objection sustained; exception.)

201 Q. Mr. Heaphy, what quantity of articles like [601] Exhibit 1, speaking in number of dollars, are you prepared to testify that you had personally purchased prior to July 24, 1897?

A. I can say about $25.00 worth ordered to that date.

Q. About $25.00 worth?

A. Yes, sir.

MARTIN ROMAN, called as a witness, and having been duly sworn, testified as follows:

By Mr. WEBSTER: [602]

Q. What is your business, Mr. Roman?

A. Buyer for the Siegel, Cooper Company.

Q. In what department?

A. I have various departments, among them notions.

Q. Among them notions?

A. Yes, sir.

Q. In the notion department do you handle articles that are represented by Exhibit 1, which I show you?

A. Yes.

Q. How long have you been handling articles like that? [603]

A. Quite a number of years.

Q. Your house is a retail house, is it?

A. Yes, sir.

Q. Have you been handling goods like that (Exhibit 1) since before July 24, 1897?

A. Yes, sir.

Q. Some years before that?

A. A number of years.

Q. In your business, do you personally purchase article like Exhibit 1 from the wholesale trade?

202 A. Yes, sir. [604]

Q. From the wholesalers as well as importers?

A. I don't know how you'd apply them.

Q. In your dealings with wholesale houses, importers or jobbers, people from whom you buy, what did you call these articles at and prior to July 24, 1897?

A. We called them herringbone at that time.

Q. Then that seemed to be the earlier name?

A. Than featherstitch braids.

Q. Anything else that you remember?

A. They were called seam bindings, seam coverings, finishing braids.

Q. What was the most usual term you used in orders in buying these? [605]

(Objected to by counsel for the importers as immaterial and irrelevant, there never having been any ruling of the court that the most usual of a series of commercial names should apply to the exclusion of the others. Objection overruled; exception.)

A. Featherstitch braids.

Q. Was the term herringbone trimming a term in general use at that time?

A. I don't think we ordered them as such.

Q. Was the term seam binding a general term as applied to these articles? [606]

A. I do not think in ordering them.

Q. You seem to imply that it was a term used in some other way. In what way would the term seam binding be used, or by whom?

A. Well, it is used largely by our consumers. Dealing with a consumer we often get generally their usage.

Q. Then I understand you that in the trade between yourself and importers or wholesalers the term featherstitch braid was the only one used?

203 (Objected to by counsel for importers as a leading question. Objection sustained.) [607]

Q. Please state again what was the term used in your dealings with the wholesale trade, or jobbing trade, or importers, carefully excluding the retail customers.

A. Featherstitch braid.

Q. Any other term, now—still with the wholesale people only?

A. I think that was the most general. I think that was general.

By Mr. COMSTOCK:

Q. Where were Siegel, Cooper & Co. prior to July, 1897? [608]

A. The New York house was established in 1896.

Q. And did you come to it at once?

A. Yes, sir; I was with it when it started.

Q. From where did you come?

A. I came from Kansas City.

Q. How many months in all prior to July 24, 1897, will you testify that you were buying such goods as Exhibit 1 at wholesale for that company?

A. Twelve to fourteen months.

Q. What quantity, stating in money, are you prepared to testify that you had bought prior to July 24, 1897?

A. Possibly $500 to $1,000. [609]

Q. Will you swear that in buying goods and dealing with the sellers regarding them you never heard the term seam binding used for the goods?

A. No.

Q. You will not swear?

A. No.

Q. Will you swear that you never heard the term finishing tapes used for the goods prior to July, 1897?

A. I will not.

204 Q. Will you swear that you never heard the [610] term herringbone tapes used for them prior to 1897 in the wholesale trade?

A. I cannot say that I have never heard the term used by the seller as herringbone.

Q. Did you buy at wholesale prior to July, 1897, a general line of tapes and braids?

A. Yes, sir.

Q. You know, do you, the ordinary characteristics of braids and those of tapes?

A. Yes, sir.

Q. Is it a characteristic of tapes as a class that they are woven?

A. Yes, sir. [611]

Q. And it is a characteristic of braids as a class that they are braided?

A. No.

Q. What do you consider to be the usual mode of fabrication of braids as shown in the product?

A. It all depends on what they are used for, as to the term that we put to them.

Q. By what process, that is whether braiding or weaving, if the product enables you to state, is Exhibit 1 manufactured?

A. (Examining exhibit.) This is woven. [612]

JOHN EDWARDS, called as a witness and having been duly sworn, testified as follows:

By Mr. WEBSTER:

Q. What is your business, Mr. Edwards?

A. A buyer.

Q. A buyer of what?

A. Notions and other departments.

Q. With what firm?

A. Simpson, Crawford Company.

205 Q. Will you please look at Exhibit 1 in this case, [613] and say whether you handled goods like that in your department?

A. Yes, sir.

Q. How long have you been handling goods like Exhibit 1?

A. As a buyer, you mean?

Q. Yes.

A. 17 years.

Q. How long have you been handling goods like that for the Simpson, Crawford Company?

A. A year and 4 months.

Q. And with whom before that?

A. Adams Dry Goods Co.

Q. How long were you with them? [614]

A. A year and 3 months.

Q. And before that?

A. Simpson, Crawford & Simpson.

Q. They were the predecessors of the Simpson, Crawford Company?

A. Yes, sir.

Q. How long were you with them?

A. As buyer I was with them for about 15 years.

Q. As buyer of a department which included articles like Exhibit 1 during all that time?

A. Yes.

Q. Did your firm import these goods or buy them? [615]

A. Not in the sense that we import them directly from a manufacturer in Europe, but we have placed import orders.

Q. Import orders with importing or commission houses in New York?

A. Yes.

Q. In your experience with the people from whom you bought goods of this character, that is, in the wholesale trade, and
206 prior to July 24, 1897, what was the name or names applied to this line [616] of goods [presenting Exhibit 1]?

A. Featherstitch braid? I would add, as long as your question relates to name or names, that previous to 1897 it was very commonly known in the importing trade as herringbone trimming and labelled in that manner.

Q. Was there any other name in general use as applied to it?

A. I have never heard of any other name in my connection with the business at all.

Q. Will you give us the names of some of the people you bought these from, if you can from memory? [617]

A. S. B. D. Yongh, Dieckerhoff, Raffloer & Co., Steinhardt & Bros., and Samstag & Hilder. That is all I can recall now. Off and on there have been others.

By Mr. COMSTOCK:

Q. Mr. Edwards, in the course of your business have you come to know what these articles are used for?

A. I have had a general idea that they were used for trimming wash fabrics and underwear.

Q. At the points where the seams are and elsewhere? [618]

A. I never took particular trouble as long as they bought them and we made a profit on them.

Q. Did you ever hear the term seam bindings applied to these articles in the course of your dealings?

A. I can't recall that I ever did.

Q. Ever hear them called seam tapes?

A. I can't recall.

Q. Or finishing tapes?

A. I can't recall.

207 FREDERICK MOSSBACH; called as a witness [619] and having been duly sworn, testified as follows:

By Mr. WEBSTER:

Q. What firm are you connected with?

A. Bloomingdale Brothers.

Q. In what department?

A. With notions and others—fancy goods.

Q. Does your department include articles represented by the samples marked Exhibit 1 in this case?

A. It does.

Q. How long have you been dealing in articles like those samples?

A. About 18 years. [620]

Q. Have you bought them in New York?

A. We bought some and we imported some ourselves, but not recently we haven't imported any.

Q. You bought them from importers and wholesale dealers, have you?

A. Yes; in the last 10 or 12 years.

Q. Did you buy any from importers and wholesale dealers prior to July 24, 1897?

A. Yes, sir.

Q. At that date and before that, and in dealings with wholesale dealers only, what was the name or names generally applied to articles like that?

A. Featherstitch braid and herringbone braid. [621]

Q. Is that all?

A. That is all that I remember.

Q. Will you give us the names of some of the people you bought those from prior to 1897?

A. C. M. Vom Baur, B. Ullman & Co., Dieckerhoff, Raffloer & Co., Edelhoff & Rinke, A. J. Hague & Co., and Dreyfuss, Weyler & Co., and there may be one or two others that I can't recall.

208 Q. In your dealings with those people, if orders sent to them; correspondence with them, if you had any; what was the name that was used as [622] applied to these goods?

A. Featherstitch braid.

Q. Can you state positively that in orders that you sent to the houses you have named you called for featherstitch braids?

A. I can.

Q. Did you ever use any other term in orders?

A. May have called them herringbone braid, but not recently.

Q. Did you ever use any other name than those two in orders?

A. No, sir.

Q. Can you say, for instance, in ordering from [623] C. M. Vom Bauer you used one of those two terms?

A. Yes, sir.

Q. Do you know how these articles like Exhibit 1 are used?

A. Yes.

Q. Have you any experience in their use?
A. In selling, yes. I know what they are used for.
Q. What are they used for?
A. As a finishing braid.
Q. On the inside or outside of goods?
A. Outside—always outside.

By Mr. COMSTOCK: [624]

Q. Do you know of anything else used to put a finish on the outside of garments besides these?
A. On cotton garments? It depends on what garment you speak of.
Q. Do you know of anything else used on the outside of garments to finish them with except these?
A. On cotton garments, none.
Q. Did you ever hear of putting an insertion on the outside of a cotton garment to finish it?
209 A. I have seen it used for ornamentation. [625]
Q. You discriminate the use of these articles liqe Exhibit 1 from ornamentation?
A. Not altogether.
Q. You do somewhat, do you?
A. To some extent.
Q. Are you prepared to swear that in dealing in these articles or going into the trade for them prior to 1897 you never heard them called seam binding?
A. I am prepared to swear that.
Q. Or a seam tape?
A. Likewise.
Q. Or a herringbone trimming? [626]
A. Herringbone trimming—I made a statement here that they were known to me as herringbone braid. The name trimming I cannot say about.
Q. Do you now mean the name herringbone, that word being used alone?
A. As a descriptive name, yes, sir.
Q. Describing these goods?
A. Yes.
Q. Are you commercially familiar with the general class of tapes and braids?
A. Yes, sir.
Q. And were you so prior to July, 1897?
A. I was.
Q. Is it a general characteristic of tapes in [627] commerce that they are woven?
A. We don't know. By the trade use of a name we begin to know the article of merchandise. We don't care as to how it is made.
Q. Is it a general characteristic of the articles generally known as tapes that they are woven?

A. Yes, sir.

(Government counsel objects to question on the ground of incompetency of witness. Question and answer allowed to stand.)

210 Q. Is it a general characteristic of the articles [628] generally known as braids that they are braided?

A. Yes, sir.

Q. Look at Exhibit 1 and if you can say whether it is woven or braided, say.

A. It is woven.

Q. Otherwise than from the ornamentation on its surface, is it, or is it not, a characteristic specimen of a cotton tape?

A. It is.

Q. Did you know at and before July, 1897, in the markets of ornamented cotton tapes?

A. I never know any to be called just by that name. [629]

Q. Did you know of ornamented cotton tapes?

A. Yes.

Q. In other words, cotton tapes were not always plain but were sometimes ornamented?

A. Yes, sir.

By Mr. WEBSTER:

Q. I understood you that you did not know of any commercial term as ornamented cotton tapes?

A. In general I did not know of any such terms, but I recognize the goods.

Q. What would they be called?

A. That would depend upon the fabric. There is one fabric known as a galloon. [630]

Q. Are gallons, as a matter of fact, an ornamented tape?

A. Yes. There is a figure woven into the fabric.

Q. What other commercial names are there that would appeal to your mind as an ornamented cotton tape?

A. Nothing that I would know of outside of a galloon—that is a fabric that is woven in white and colors, or contrariwise.

Do you include this Exhibit 1?

211 A. If the braid hadn't been known as featherstitch [631] braid I might place it in the same category.

CHARLES S. KING, called as a witness and having been duly sworn, testified as follows:

By Mr. WEBSTER:

Q. What is your business, Mr. King?

A. Manufacturer of featherstitch braids.

Q. Where is your place of business?

A. 9/11/13 Mercer Street.

Q. Where is your factory?

A. Pawtucket, R. I. [632]

Q. How long have you been in that business?

A. Since the latter part of 1896, the early part of 1897.

Q. What is the name of the concern with which you are connected?

A. The Sanford Narrow Fabric Company.

Q. What is your position or capacity?

A. General manager.

Q. Have you sold goods as well as managed the business?

A. Yes, sir.

Q. Did you sell any before July 24, 1897?

A. We sold them from the first of January, 1897, to the present date. [633]

Q. When did your personal experience in selling begin?

A. Perhaps not until 1899.

Q. Please look at Exhibit 1—do you make merchandise that is similar to that?

A. I do.

Q. On these samples which are marked Exhibit M, do you know whether those articles like Exhibit 1 were made by your firm or not?

212 A. The one on the light colored wrapper was [634] not. The braids on the dark colored wrapper were made by us.

Q. Have you had general charge of the management of your business and the correspondence?

A. I have.

Q. Have you had charge of orders that came in from various people?

A. I have seen all the orders that have ever came in—practically all.

Q. Have you brought here any correspondence and orders from customers for articles like Exhibit 1?

A. I have. [635]

(Correspondence offered in evidence, and marked "Illustrative Exhibit N.")

Q. Were these letters marked "Exhibit N" received by you in the regular course of business?

A. They were.

Q. Mr. King, please look at these four orders from George Borgfeldt & Co. on their order form, and two letters which also appear to be in the nature of orders, and say whether you received these in the ordinary course of business from that firm?

A. We did.

(Government counsel offers these in evidence, [636] and calls the board's attention to the fact that the testimony of Mr. Stockum of George Borgfeldt & Co. is not limited to a period prior to 1897, but he made general answers here, several of them to the fact that he does not buy them nor sell them under the name of featherstitch braids. Counsel for the Government also calls attention to the fact that one of the letters offered in evidence is signed by Mr. Stockum.)

213 Counsel for the importer objects on the [637] ground previously stated to the receipt in evidence of any part of this bunch of documents not bearing date at or prior to July 24, 1897. Objection on this ground sustained.

Counsel for the Government then stated that these papers are not offered for the purpose of showing the commercial name of the article, but for the purpose of discrediting the witness Stockum. Counsel for the importers objects to the acceptance in evidence of these papers for this purpose, on the ground that Mr. Stockum was a witness duly subpœnaed and examined by the Government, and on the further ground that the only proper method [638] to discredit him is to confront him personally with the documents now offered. Objection overruled; exception.)

(Letters and orders as above admitted in evidence, and marked "Exhibit O," illustrative.)

Q. Have you an order from C. M. Vom Baur for some of your featherstitch braids?

A. Yes. We have received a great many orders from them. I have one here (producing order).

Q. Was this order received by you in the regular course of your business?

A. It was. [639]

Q. I notice on this order that the goods ordered are described as FS braids put up 12/6 yards with certain numbers. Is that a customary term to use in correspondence—FS braids?

(Importer's counsel objects to any question or testimony based upon the order to which counsel is referring, on the ground that it is an order of later date than July 24, 1897. Objection sustained.)

214 Q. Have you, Mr. King, received a number of [640] orders for braids of your manufacture—featherstitch braids—from C. M. Vom Baur?

A. I have a great many of them.

Q. Can you tell whether you received any prior to July 24, 1897, from him?

A. I don't recollect the exact dates. We may have received some in 1897, but whether it was before July or after July I couldn't say.

Q. Have you ever in your experience, Mr. King, received any orders for goods which you make and which you call featherstitch braids, which orders described them by any other name?

By Mr. COMSTOCK: [641]

Q. I understand you to say that your present enterprise was established late in 1896, or early in 1897?

A. Yes.

Q. And were you in it from the start?

A. Yes, sir.

Q. What was your personal function in it at first?

A. The same as it is now.

Q. That is?

A. Manager—it was not a stock company at that time, it was a firm. Same name exactly, only it was not incorporated. [642]

Q. And how long did that continue?

A. It continued up to the present year.

Q. And you were the manager of the firm, were you?

A. Yes.

Q. The business of the firm was the manufacture of goods of this character [indicating Exhibit 1]?

A. When we started the business we had them made for us.

Q. And you did what with them?

215 A. We sold them. We afterwards established a factory of our own. [643]

Q. When did you establish a factory?

A. About five years ago, I should say.

Q. And at and prior to July 24, 1897, can you testify that you personally took part in commercial transactions in the buying or selling of these goods?

A. Absolutely.

Q. How, then?

A. Why, I did all the correspondence with the mills.

Q. From whom you ordered the goods?

A. From whom I ordered the goods. [644]

Q. Were your dealings confined to this one class of goods?

A. They were.

Q. Like Exhibit 1?

A. They were.

Q. How many transactions can you testify that you took part in in these goods—commercial transactions—prior to July 24, 1897?

A. There were transactions coming up daily.

By Mr. WEBSTER:

Q. (Mr. Webster's last question was read and witness answered:)

A. Not to my recollection.

Q. Do you know the firm of Butler Brothers in New York? [645]

A. I do.

Q. Do you know what their business is?

A. They handle a general line of notions, dry goods, hardware, house furnishing goods, and hosiery. Almost everything suitable for a general store.

Q. Do you recognize this book as the catalogue of Butler Brothers [indicating book]?

A. I do.

216 Q. Do you find in the book any advertisement or [646] enumeration of articles like Exhibit 1 in this case?

(Objected to by counsel for the importers on the ground that the publication shown the witness is on its face the private organ of a commercial house, and under the established rule of the courts such house organs are not admitted in evidence as publications showing, as do trade papers or the like, trade designations. The only way to

prove the usage of Butler Brothers which alone this catalogue would tend to prove, is to put Butler Brothers on the stand for direct and cross-examination. Objection sustained.) [647]

By Mr. COMSTOCK:

Q. Mr. King, am I right in understanding that from the stock of your business, whether conducted as a firm or corporation, you are manufacturers, and your dealings have been limited to the class of articles shown in Exhibit 1 in this case?

A. Almost entirely so.

Q. What else?

A. We have had some plain webs, but very few.

Q. Cotton webs?

A. Yes.

Q. How are those made? [648]

A. They are a heavy class of goods.

Q. Are they braided, or are they woven?

A. They are woven.

Q. What do you call them when you get them woven?

A. Webs.

Q. Is that the only name they have?

A. That is all that I ever heard them called by.

Q. Are you prepared to swear that in your dealings in
217 articles like Exhibit 1, you never heard the term seam binding applied to them by anybody? [649]

A. Never.

Q. Or finishing tapes?

A. Never have heard that application used that I can remember of.

Q. Never heard the term in trade?

A. Yes: I have heard the term, but not as applied to these goods.

Q. Have you braiding machinery in your factory?

A. No.

Q. You don't braid anything?

A. No.

Q. Have you handled any braids made on braiding machines? [650]

A. Yes.

Q. But have not made them?

A. Have not made them personally.

Q. Is it, or not, your understanding as a dealer that it is the usual way to make braids on braiding machines?

A. Not necessarily.

Q. Is it, or is it not a fact, whether necessarily, or otherwise, your understanding that the usual way of making braids is on a braiding machine?

A. A braiding machine will make braids.

By Mr. Webster: [651]

Q. Do you know of a design in featherstitch braids which is made especially with the idea of applying it with one line of stitching?

A. Yes, we have made a number of braids to be applied with a single stitch.

Q. Are there any among Exhibit 1 that would be designed for that purpose?

A. Yes, there are two there that might be termed single stitch bindings.

218 Q. Which ones are they? [652]

A. Braid Nos. 720, 753, 710.

Q. Mr. King, have you any sample card or book of your goods which was made up and issued prior to July 24, 1897?

A. I have.

Q. Is this it [producing same]?

A. Yes, sir.

Q. Have you a positive recollection about the date on which this was made up and issued?

A. Well, I can't give you the exact day or the month. I know it was in the early part of the year.

Q. Can you state positively that it was before July 24, 1897? [653]

A. I think I can, because it was practically our first sample card, and it was gotten out at that time.

Q. What is the name of the articles that appear at the top of each page of samples in this sample book?

A. American made featherstitch braid.

By Mr. Comstock:

Q. I believe you have testified on your direct examination that you never received orders, at all events prior to July, 1897, or trade communications in regard to this class of goods by any other [654] designation than featherstitch braids. Did you so testify?

A. If you will refer to my answer to that question I think you will find I said, not to my recollection.

Q. And you say that to your recollection you never did?

A. I repeat the same answer that I made to the question.

219 Q. Look at the letter included among Exhibit N, being from Strauss, Sachs & Co., under date of [655] June 30, 1897. Do you find there a reference to the kind of goods you have been testifying about—answer yes or no?

A. I do.

Q. In what phraseology is it couched?

A. Featherstitch assortments.

Q. Is that, or is it not, within your conception a reference to the goods by the name of featherstitch braids?

A. It refers to featherstitch braids.

Q. Does that, or does it not, with your conception refer by the name of featherstitch braids to those goods?

A. No, it refers to them by the name of featherstitch assortments. [656]

PERCY GARDNER, called as a witness, having been duly sworn, testified as follows:

By Mr. WEBSTER:

Q. What firm are you connected with?
A. Sanford Narrow Fabric Company.
Q. The same concern as the last witness?
A. Yes.
Q. What part of the business do you attend to?
A. The selling of the goods. [657]
Q. How long have you been selling goods manufactured by them?
A. Since December, 1896.
Q. Will you look at Exhibit 1 in this case, and say whether the goods that you have sold are fairly represented by those samples?
A. Yes, sir.
Q. Now, please state under what name or names those goods were sold on and prior to July 24, 1897, in the wholesale trade?
220 A. Featherstitch braids. [658]
Q. Any other names used?
A. I have heard them called herringbone braids.
Q. Any other name?
A. Those are the only two names I know to specify this particular kind of goods.
Q. Have you sold goods to C. M. Vom Baur?
A. Yes.
Q. Have you sold any to F. E. Stockum, or to his employers?
A. Yes.
Q. Have you sold to Weiller & Sons?
A. Yes.
Q. Do you know Daniel Weiller of that firm?
A. Yes. [659]
Q. Have you sold any to Mills & Gibb?
A. Yes.
Q. A. J. Hague & Company?
A. Yes.
Q. A. Steinhardt & Brother?
A. Yes.
Q. Dieckerhoff, Raffloer & Co.?
A. Yes.
Q. In filling orders from those firms and furnishing them the goods, have you put labels upon them in accordance with instructions from the customer?
A. Yes. [660]
Q. Did you do that before 1897?
A. Yes.
Q. Have you any of those labels here that were furnished in that way and applied to featherstitch braids before 1897?
A. Yes.
Q. For what firm was this label made up that I show you now?
A. Weiller & Sons.

221 Q. Was that made before July 24, 1897? [661]

A. Yes.

Q. Does this label bear the trade-mark of Weiller & Sons?

A. Yes.

Q. Put upon it by their authority?

A. They instructed me to put it there.

(Label introduced in evidence and marked "Exhibit P," illustrative.)

By Mr. COMSTOCK:

Q. How do you know Mr. Gardner, that this label which is now offered in evidence was ordered from you prior to July, 1897? [662]

A. Because it was the only label we then made.

Q. How does that prove it was ordered prior to July, 1897?

A. I went to Weiller & Sons to get some encouragement regarding a specific order for the goods—that was in January or February—it was in the winter months of 1897. We had previous to that time sold our goods in bulk packages. We wanted to get in the small piece goods business, and Mr. Weiller encouraged me to the extent of some several thousand dollars and ordered that label.

Q. Are you prepared to swear here that any member of the firm of Weiller instructed you [663] specifically to label these feather-stitch braids, or was it the general color and make up of the label which he chose?

A. It was an exact copy of the label that he gave me and instructed me to put on his goods, with the exception that the label he gave me was marked "Germany," and he told me to leave off the word "Germany."

222 Q. Was what he gave you a label already printed, and one which you would naturally assume [664] was taken off a piece of goods?

A. As a matter of fact, it was on a piece of goods at the time. I remember the case exactly.

Q. So that the fact was that he handed you a small bundle of this product with such a label on it, and instructed you to duplicate that except for leaving off the word "Germany"—is that it?

A. Yes.

By Mr. WEBSTER:

Q. What is this next label—for what firm was that prepared?

A. For Dieckerhoff, Raffloer & Co. [665]

Q. Prior to 1897, or after?

A. It was in the spring of 1897.

(Label offered in evidence, accepted, and marked "Exhibit Q.")

Q. For what firm was this next label prepared?

A. Strauss Brothers.

Q. Was that made up for them before July, 1897?

A. Yes.

(Label offered in evidence, accepted, and marked "Exhibit R.")

(Counsel for the Government having exhibited [666] to the general appraiser copies of the publication entitled the Dry Goods Economist, bearing date prior to July 24, 1897, it is stipulated and agreed by and between counsel for the respective parties to this proceeding that the Dry Goods Economist is a well-known and representative publication circulating in the wholesale trade in dry goods, notions, and similar lines, and that page 71 of its issue of
223 January 16, 1897, contains an advertisement of Samstag & Hilder Brothers, showing [667] cuts of the same kind of merchandise as is now in controversy; and that such merchandise is referred to in the advertisement by the title "featherstitch braids," and that on page 32 of this edition of March 30, 1895, there is an advertisement of Mills & Gibb, in which certain articles not shown by any cut are referred to by the term featherstitch braids, and that in the edition of April 13, 1895, page 68, shows an advertisement of A. Steinhardt & Brother, in which without cuts or illustrations to demonstrate the character of the goods referred to, is contained an enumeration of castings, beltings, and bindings; featherstitch and [678] novelty braids in white and colors, honiton braids, rickracks, an entirely new line of cotton trimmings.)

By Mr. COMSTOCK:

Q. Mr. Gardner, have you made all the sales of goods that have been made on behalf of the Sanford Company since its start in business?

A. I cannot say that.

Q. Have you made all those in and about New York?

A. The majority of them. [669]

Q. Who made the rest?

A. Mr. King.

Q. Mr. King who testified here?

A. Yes.

Q. If Mr. King has testified here to-day that he has come in contact with substantially every sale made by this business concern since its start in 1896 or 1897, would it be your understanding that he has had contact with all the transactions that you have made?

A. Yes.

224 Q. And also other than you have made? [670]

A. All that he made himself he is conversant with.

Q. Then the transactions about which you have testified here this afternoon are included among the transactions about which Mr. King has testified necessarily, are they not?

A. Yes, sir.

(Counsel for the importers consents that it shall appear as proven upon the record that the house of Butler Brothers issued a catalogue or price list in 1895 in which goods depicted in cuts following and appearing to be [671] identical with those in controversy are referred to as featherstitch braids, and that in the same catalogue there are

references to articles or groups of articles not illustrated by cuts, under the title of cotton tape, stay binding, and fancy loom webs.)

United States Circuit Court, Southern District of New York. [672]

C. M. Vom Baur
vs.
The United States. } No. 3640.

To the Circuit Court of the United States for the Southern District of New York:

The undersigned, a general appraiser under the act of June
225 10th, 1890, to whom it was referred by this honorable court by an order made [673] September 29, 1904, to take further evidence in the above-entitled matter, do hereby return such further evidence taken by me pursuant to such order.

Dated, New York, April 1st, 1905.

Thad. S. Sharretts,
W. B. Howell,
United Etates General Appraisers,
As Officers of the Court.

United States Circuit Court, Southern District of New York. [674]

C. M. Vom Baur
vs.
The United States. } No. 3640.

New York, *January 13, 1905.*

Before Hon. T. S. Sharretts, as officer of the court.

Appearances: [675] For the importer, Albert Comstock, Esq.; for The United States, Charles Duane Baker, Esq., assistant U. S. attorney.

Leopold Baruch, called as a witness on behalf of the importer, being duly sworn, testified as follows:

226 By Mr. Comstock: [676]

Q. What is your business, Mr. Baruch?

A. Importer of novelties, etc.

Q. Do you conduct it in your own name?

A. Yes, sir.

Q. And where?

A. 605 Broadway.

Q. How long have you been in that line of business?

A. For myself, about six years; and before that three years.

Q. The three years being in what connection?

A. In the line of selling the goods.

Q. Name the house or houses that you were with prior to 1897. [677]

A. A. Steinhardt & Brother.

Q. Have you bought and sold in wholesale quantities a kind of merchandise sometimes called herringbone?

A. I have.

Q. Please describe the appearance of that merchandise as you have handled it.

A. Herringbone?

Q. I want a description—please describe how they look.

A. They look like a narrow tape, from a quarter up to one and one-quarter inches in width.

Q. Plain or with ornamentation? [678]

A. Plain as well as with ornamentations.

Q. Please look at the print that I now show you and say whether the goods represented in that print illustrate fairly these herringbone goods.

A. It does.

Mr. COMSTOCK. I offer this in evidence as an illustrative exhibit.

(Same received and marked "Illustrative Exhibit A.")

227 Q. Now, Mr. Baruch, referring to the period [679] prior to 1897, please state by what name or names these goods were known and bought and sold in the wholesale trade of this country?

A. They were known and bought in the wholesale trade of this country such as seam binding, finishing tape, herringbone, feather banding, as well as featherstitch braids.

Q. Would any one of those names equally well identify the article among dealers?

A. Yes, sir.

Q. And what was or were the use or uses to which they were put?

A. They were used to cover up the seams.

Q. On men's coats? [680]

A. No; on infants' wear, babies' wear, trimming dresses.

Q. Meaning particularly muslin garments?

A. Muslin garments.

Q. As to the goods of this kind which you have dealt in, have you frequently examined the texture of them to see by what process they were made, that is to say, whether by a braiding or a weaving process?

A. I did.

Q. By what process were they made?

A. By the weaving process.

Q. Made in the loom? [681]

A. Made in the loom.

Q. Have you handled in the course of your business goods that were made by braiding?

A. I did.

Q. Please explain on the record here what difference in appearance it is that enables you to say that one article is made by weaving and another by braiding?

A. An article made by the loom is tightly put together, whereas by the braiding machine it is more open.

228 Q. Is it or is it not the fact that the threads are [682] laid by a braiding machine diagonally across the goods and by a weaving machine straight across the goods?

A. By a weaving machine to my knowledge they are all laid straight.

Q. Either through the length of the goods or straight across?

A. Yes.

Cross-examination by Mr. BAKER:

Q. Have you had any experience in the manufacture of these braids?

A. No, sir. [683]

Q. Not been connected with the manufacturing business at all?

A. Never.

Q. Have you visited the mills where they are made?

A. No, sir.

Q. You only know from what you have handled?

A. From what I have handled.

MORTIMER HYMAN, called as a witness on behalf of the importer, being duly sworn, testified as follows: [684]

By Mr. COMSTOCK:

Q. Please state your business, Mr. Hyman?

A. Importing notions and similar goods.

Q. What house?

A. Strauss Bros. & Co.

Q. Their place of business?

A. 355 Broadway.

229 Q. How long have you been selling goods for them? [685]

A. Thirty years.

Q. At wholesale or retail?

A. Wholesale exclusively.

Q. Generally all over the country?

A. Generally all over the country.

Q. Among the goods which you have sold for this period of time for that house has there been a variety of goods sometimes known as herringbone?

A. Yes.

Q. State by what names or names in the wholesale trade of this country at and before 1897 that article of merchandise was designated?

A. Seam stitching, featherstitch braid, finishing [686] tape, herringbone.

Q. And do you say that each of those names would as well as any other one designate the substance in trade at that time?

A. Yes, sir.

Q. Are you familiar with the use or uses to which the article is put?

A. Yes.
Q. Please state to what uses it is put.
A. They are used for finishing seams on cotton garments, such as night shirts, wrappers, and children's waists, etc.
Q. Is that the chief use? [687]
A. Yes, sir.

By the REFEREE:

Q. Have you heard it called herringbone trimming?
A. Yes, I have.

By Mr. COMSTOCK:

Q. Mr. Hyman, have you purchased this product from any domestic source?
A. We have.
230 Q. Please name the chief concern among domestic [688] producers from whom you bought them?
A. Bought them from the Standford Narrow Fabric Company.
Q. And your testimony as to the several names by which it has been known, does that testimony apply as well to what you have had from them as to any?
Q. Yes, sir.

Cross-examination by Mr. BAKER:

Q. These articles are ornamental somewhat in their character, are they not?
A. Apparently, yes. [689]
Q. They are composed of a figure of various colored threads?
A. Yes, sir.
Q. Woven in certain patterns?
A. Yes, sir.
Q. And designs?
A. Yes.
Q. They are used for sewing over, covering seams of garments?
A. Yes, sir.
Q. To give the garment a better finish?
A. Yes, sir.
Q. To remove the rough edge of the seam that would otherwise appear, I suppose? [690]
A. Yes, sir.
Q. In your opinion are they used in that way somewhat as trimmings?
Mr. COMSTOCK. Objected to as calling for a conclusion of the witness, in the language of the act.
Q. How long have you been in the business of buying and selling braids?
A. Over twenty years.
231 Q. What class of articles have you dealt in? [691]
A. Principally in this class of goods.

Q. Have you dealt in articles similar to these that are used for trimmings, that would be used for trimming garments?

A. Dress trimmings.

Q. Are you familiar with what are known as dress trimmings?

A. Yes, sir.

Q. What particular kind of dress trimmings are you most familiar with?

A. There are a great variety of dress trimmings, in silk and mohair and cotton.

Q. But I refer now to the definite kind of article, such as braids or things that you sew on to [692] trim, that kind of trimmings—are you familiar with those?

A. I am familiar with the class of trimmings—I say there are all kinds and designs of trimmings, such as silk trimmings and cotton trimmings and galoon trimmings, trimmings of that character.

Q. Then from your knowledge of dress trimmings, trimmings of every kind that you have described, in your opinion are these featherstitch braids used for the purpose of trimmings in the use to which they are applied?

Mr. COMSTOCK. Same objection.

The REFEREE. I don't think the witness [693] should be called upon to express an opinion at all; objection sustained.

Answer insi'ted upon and admitted under Rule XI.

A. These featherstitch braids, whether they are used as trimmings?

Q. Are they not used as trimmings in the sense that they are used to trim?

232 A. Well, they are used on the garments or night [694] shirts or waists, where they serve to cover the bands as a binding; they serve also in some cases as a trimming, as a finish to it—finish the garment.

Q. That is what it is put on for?

A. Yes.

Q. That is the use to which they are very generally put, isn't it?

A. Yes.

Redirect examination by Mr. COMSTOCK:

Q. Mr. Hyman, in the course of your commercial experience have you dealt in beltings of cotton?

A. Yes, sir. [695]

Q. Whether it is a usual or unusual thing for those to carry an ornamental pattern wrought into them in the process of manufacture?

A. They have ornamental patterns in beltings; yes.

Q. Are there other sorts of bindings besides these featherstitch bindings which you deal in?

A. No.

Q. You don't handle any other bindings?

A. We don't handle any other bindings.

Q. You have testified on cross-examination that these articles were used to cover up the raw seams of garments to give them a more finished effect; [696] whether or not that is the typical use of seam bindings?

A. Yes, sir.

Q. What other kind of bindings are these besides seam bindings that you know of in trade?

A. Skirt bindings.

Q. Those are put on the outside or the inside of the skirt, which?

A. They are put on both sides.

233 Q. Sometimes on one side and sometimes on the other? [697]

A. Sometimes on one side and sometimes on the other.

Q. When put on the outside do they give to the dress a somewhat ornamental finish?

A. Yes; they finish it.

By the REFEREE:

Q. I understood you to say that you handled trimmings, also your firm, dress trimmings?

A. No; we don't handle dress trimmings.

Q. Do you handle trimmings of any description?

A. No, sir. [698]

Q. For garments, underwear?

A. No, sir.

Q. In your testimony you stated that this article was known by several different names, and among them you included herringbone and featherstitch braid?

A. Yes, sir.

Q. As a matter of fact, are not those separate and distinct articles?

A. No, sir; the same.

Recross examination by Mr. BAKER:

Q. Mr. Hyman, in referring to a herringbone why do they give the name herringbone to an [699] article of this description—is that because of the zigzag pattern?

A. On account of the pattern; yes.

Q. Is that the only term that is applied to them, to simply call them herringbone, or is that only part of the designation? If it is only part, what is the rest?

A. It seems to be a general term for that article, for that particular article, herringbone.

234 Q. Have you ever heard any other phrase or [700] term connected with it? Braids?

A. Herringbone trimming.

Q. Herringbone trimmings?

A. Yes; it has been used in connection with herringbone.

Q. And herringbone bindings—anything like that?

A. I can't recall that; possibly; I think it has been called that way.

ISAAC BERG, called as a witness on behalf of the importer, being duly sworn, testified as follows: [701]

By Mr. COMSTOCK:

Q. What is your business, Mr. Berg?
A. Notions and fancy goods.
Q. The firm name?
A. Berg Brothers.
Q. Whose place of business?
A. 46 Lispenard.
Q. Its business wholesale and retail?
A. Wholesale only.
Q. And you have been engaged in that business how long?
A. Twenty-one years.
Q. Look at the illustrative Exhibit A in this [702] case and referring to the piece of goods pictured there, say whether you have dealt in such an article as that represents?
A. We have.
Q. How long?
A. About seventeen years.
Q. Referring to a period at and prior to 1897, please state the name or names by which that product was bought and sold and known in trade?
235 A. As long as I have been dealing in it they [703] have been known as seam bindings, principally covering up seams.
Q. That is the principal use, covering up seams.
A. Yes; they have been known as that as long as I have been in it; twenty-one years.
Q. Are your of both foreign and domestic origin, your goods of that kind?
A. Yes; both.
Q. What substance are they made of?
A. Cotton, etc.; I suppose mostly all cotton.
Q. Have you examined the fabric of these goods frequently in the course of your business?
A. Yes.
Q. State, if you know, whether that fabric is a [704] woven or a braided fabric?
A. They are braided and woven, both.
Q. You have handled them both braided and woven?
A. I am not a manufacturer; at the same time they seem to be woven and braided.
Q. Which mostly?
A. Woven, I guess; woven in with the cotton together.
Q. That is to say, the pattern that they carry and the foundation are woven at the same time?
A. All woven together.
Q. Do you deal in beltings? [705]
A. Yes, sir.

Q. Are those woven goods?

A. Those are all woven in the piece.

Q. Whether they have a pattern woven at the same time as the foundation?

A. Mostly all fancy beltings have a fancy weave in the center or sides.

Q. Thus similar in this respect to the seam bindings?

236 A. They seem to be manufactured on the same principle.

[706]

(No cross-examination.)

MORITZ HILDER, called as a witness on behalf of the importer, being duly sworn, testified as follows:

By Mr. COMSTOCK:

Q. What is the name of your firm?

A. Samstag & Hilder Bros., 557 Broadway.

Q. You are a wholesale dealer in notions, are you not? [707]

A. Yes, sir.

Q. And have been how long?

A. 22 years.

Q. During how much, if any, of that time have you dealt in a substance sometimes called herringbone?

A. About 17 to 18 years.

Q. You recognize that name as describing a distinct article, do you?

A. Yes, sir.

Q. Please look on the goods depicted in this illustrative Exhibit A and say whether that is a fair representation of the same substance? [708]

A. This is a featherstitching; herringbone is a raised pattern; it has the shape of a herringbone.

Q. And by that I take you to mean that the ornamental patterns has the shape of a herringbone?

A. Yes.

Q. Now, referring to the period at and prior to 1897, please state by what name or names that substance was known and designated among wholesale merchants in this country?

237 A. Featherstitching, seam binding, herringbone [709] braid; different customers ask for it by different names.

Q. Look at the bunch of exhibits returned by the board in this case marked 4967-F, etc., Illustrative Exhibit A, and say whether those goods are the sort about which you have been testifying?

A. They are the ones.

Q. Now, Mr. Hilder, are you familiar with the use or employment of this product?

A. We sell them for the purpose of covering seams.

Q. Not in woolen outside garments?

A. No; for ladies' or gentlemen's underwear and night shirts, to cover seams. [710]

Q. Are you dealers in beltings?

A. Yes, sir.

Q. Cotton beltings?

A. Yes.

Q. How long have you been?

A. Just as long.

Q. All this time?

A. Yes, sir.

Q. Please state how the fabrication and appearance of the cotton belting compare with those of these seam bindings in this case?

A. They are woven on looms the same as these.

Q. And ornamented in the loom? [711]

A. Yes.

Q. The same as these?

A. The same as these.

Q. Are you sufficiently familiar with the fabrication of goods to distinguish between a braided article and a woven article like a tape?

A. No, I don't know.

Q. Do you deal in tapes generally, cotton tapes?

A. We do.

238 Q. Please examine the ground work, as I may [712] call it, of these exhibits in this case and say whether or not you find that to be a typical tape?

A. They are woven.

Q. Like a tape?

A. Like a tape.

Q. What other kinds of bindings do you deal in besides seam binding?

A. Bias seam binding, used for the same purpose, to cover seams.

Q. Are those plain or ornamented?

A. Plain.

Q. Do you deal in skirt bindings?

A. We deal in skirt bindings. [713]

Q. Is that a cotton article?

A. Some is made of cotton, some made of worsted, and some mixed.

Q. What is the object of a binding—what is the *the* common object of all bindings?

A. To reinforce the seams and give the article finish.

Cross-examination by Mr. BAKER:

Q. Mr. Hilder, what line of goods do you deal in?

A. Everything in small wares, notions, fancy goods. [714]

Q. Trimmings of all kinds?

A. No, not trimmings.

Q. Of any kind?

A. It depends; if a trimming is fashionable we have some trimmings, but we are not known as a trimming house.

Q. You don't deal in trimmings?

A. We don't deal in them.

Q. Do you deal in trimmings of any kind?

239 A. Not to amount to anything; some seasons if a certain special trimming is a novelty we may have some. [715]

Q. You deal in such articles as are represented by the samples here in suit?

A. Yes, sir.

Q. At wholesale?

A. Wholesale only.

Q. Both domestic and the foreign?

A. Hardly domestic.

ERWIN HORRAX, called as a witness on behalf of the importer, being duly sworn, testified as follows: [716]

By Mr. COMSTOCK:

Q. Mr. Horrax, what is the nature of your business?

A. I am a*n* importer of small wares.

Q. Conduct the business under your own name, do you?

A. Yes.

Q. How long have you been an importer of small wares?

A. In New York, I have been here since 1880.

Q. Have your dealings been at wholesale or at retail?

A. Wholesale. [717]

Q. Please look at the illustrative Exhibit A, returned by the board in this case, and say whether you recognize that merchandise as identical with what you have dealt in?

A. Yes.

Q. How long have you dealt in such merchandise as that?

A. I have dealt in it for twenty-four years, about.

240 Q. Please state the name or names by which at [718] and before 1897 that article was designated among wholesale traders in this country?

A. Herringbone binding; they call it different kinds of names; seam binding; then it is also called featherstitch braid.

Q. To what use is the article put, according to your experience with it?

A. It is used for a binding, seam binding.

Q. Do you deal in any other sort of bindings than seam bindings?

A. Yes.

Q. Such as——

A. All kinds of seam bindings. [719]

Q. Do you deal in any other kind of bindings than seam bindings?

A. Certainly.

Q. Such as what?

A. Prussin bindings.

Q. What is their use?

A. Similar to these, only they are plain goods; galloons are the same class; galloon bindings are the same thing; ordinarily you call it galloons, but they are galloon bindings.

Q. Do you deal in skirt bindings?

A. Yes, and beltings.

Q. Are you familiar with the fabrication of the goods which this suit involves? [720]

A. I am familiar with them, yes.

Q. Please state whether by fabrication those are braids or tapes?

A. They are tapes; they are made on a loom, and a braid is made on a machine.

Q. A machine known by what name?

A. A braiding machine.

241 Q. Please describe what feature of the finished goods it is that would enable you to say that one was made on the braiding machine and the other on a loom? [721]

A. This (exhibit in suit) has got a warp and a weft. A braid has only got a warp, so to speak; it is braided; there are so many threads run straight along; whereas this has a warp of so many threads, then it has a filling thread or weft, as it is called. One is woven and the other is braided.

Q. As to these goods in suit is the colored thread which appears on some of them put in by the same process by which the white thread is put in?

A. Yes.

Q. And at the same time?

A. Yes.

Q. By a single process? [722]

A. Exactly.

Q. Do you deal in cotton beltings?

A. Yes, sir.

Q. How are those made?

A. In the same way as these, only they are a little wider, usually.

Q. Do they carry a pattern?

A. They do carry a pattern, and they are plain the same as these are, just as these are plain and with patterns.

Cross-examination by Mr. BAKER:

Q. Are you a manufacturer of this kind of goods? [723]

A. No, sir.

Q. Have you ever been?

A. I have been a manufacturer of braids; I was brought up in a braid factory as a boy, and I have dealt in both braids and these goods ever since.

Q. You never have manufactured such as the samples in evidence here?

A. No, sir.

242 Q. Are you familiar with the process of manufacture? [724]

A. In a general way. In the last thirty or forty years I have been through most of the small ware factories in Europe and this country, helping them to get out designs, etc.

Q. To what use are the articles put such as we have here?

A. They are used for covering seams in children's underclothes.

Q. What other garments?

A. Mostly underwear.

Q. For children?

A. Children, and women, too. [725]

Q. The witnesses have said they were used on night shirts for men; is that true?

A. I have seen them used on that.

Q. What is their purpose in being used on underwear, night shirts, and so on?

A. In some underwear it is used for covering the seam; in others it is used for ornamentation you might say.

Q. To a certain extent do they not form the purpose of an ornamentation when they are put over a seam to cover up the rough edges?

A. Of course you put a plain binding over it to cover the seam in just the same way. [726]

Q. These are an ornamental figure, are they not, in colors?

A. In colors?

Q. Is it not true they are in colors?

A. Some of them.

Q. An ornamental figure?

A. Yes.

Q. All of them are so, all made in figures?

A. They are all pure white.

Q. Not those you have in your hand?

A. All bindings—

243 Q. Taking the samples that are in evidence [727] here, they are of an ornamental design, are they not?

A. We wouldn't call them ornamental except so long as they are two colors.

Q. They are ornamental in the sense that they are made in more than one color?

A. They may be.

Q. And made in different patterns or designs?

A. That may be true to a certain extent.

Q. I want to know whether you say so?

A. I wouldn't say so; an ornamental effect has usually got something foreign to its ground work.

Q. But these are to a certain extent ornamental?

A. To a degree, but it is very small. [728]

Q. By what names are they usually bought and sold, as I understand you to say?

A. Seam binding.

Q. What else?

A. And featherstitching or herringbone binding.
Q. Are they ever known as featherstitch braids?
A. I have heard them called that.
Q. Quite generally in the trade?
A. No, sir; I never call them that myself.
Q. I didn't ask you what you called them; are they not called in the trade, quite generally, featherstitch braids? [729]
A. I have heard them called that; no more generally than in other ways.
Q. Are they also known as herringbone?
A. Herringbone binding.
Q. You ever hear any other term used in connection with herringbone besides binding? Ever hear of herringbone braid, herringbone trimming, or anything else?
A. No, sir; I don't know anything called herringbone braid.
244 Q. Did you ever hear of a herringbone trimming? [730]
A. Yes, I have heard of it, but I don't deal in trimmings; I am not in the trimming line.
Q. I say have you heard of a herringbone trimming in trade?
A. Yes; I have heard of it.
Q. It is a trade term, isn't it?
A. I suppose it is.
Q. Are there any other names by which you have heard them designated in trade that you can think of?
A. No, I don't know of any other.

Redirect examination by Mr. COMSTOCK: [731]

Q. You have testified on your cross-examination to having heard the term herringbone trimming; say whether or not the goods in this case are known in trade as herringbone trimming?
A. Not to my knowledge.

SEYMOUR HERMAN, called as a witness on behalf of the importer, being duly sworn, testified as follows:

By Mr. COMSTOCK:

Q. What is your business, Mr. Herman? [732]
A. Manufacturing children's dresses.
Q. Please examine this Exhibit A returned by the board in this case, and say whether in your business you use the article that that represents?
A. We use that white.
Q. You use some of the patterns that are shown here?
A. That is the grade of goods that is shown there.
245 Q. State to what use you put it? [733]
A. For seam binding.
Q. Do you use considerable quantities of it?
A. Yes, we use that considerably.
Q. Do you know whether what you purchase is of imported or domestic origin?

A. That I couldn't tell you.
Q. You don't concern yourself about that?
A. No, sir.
Q. Does what you use run in the same widths as some of these patterns?
A. It looks so to me, yes; it may be a little narrower or a trifle wider.
Q. Not all of an identical width? [734]
A. We use mostly of the narrow.

Cross-examination by Mr. BAKER:

Q. What kind of goods do you deal in?
A. Children's dresses.
Q. Do you handle goods of this description (referring to exhibit in suit)?
A. Yes, sir.
Q. Do you handle tapes?
A. We use tapes too.
Q. Buy and sell them?
A. No, we use them, we consume them, we buy them and use them for binding the seams. [735]
Q. Would the samples in evidence be accepted by you on an order for tapes?
Mr. COMSTOCK: I object to that, because this witness has not shown to have been in the business in 1897.
(Objection overruled. Exception.)
A. Yes, I should think so, that is, as far as my knowledge of the goods go.
246 Q. You try and make them serve the purpose—[736] is that what you mean?
A. That is what we use.
Q. You wouldn't strictly call them a tape, would you?
(Same objection, same ruling and exception.)
A. Yes, I think I would call them a tape, I think I would call them a tape, because that is the use they are put to, in binding seams.
Q. Couldn't anything else be put to that use?
A. Oh, my, yes.
Q. Isn't it? [737]
A. As far as my knowledge goes, I couldn't answer you truthfully.
Q. Don't you know whether they are or not?
A. I do not know, simply because we use that making a high grade of goods; use cheap stuff for binding the seams.
Q. Do you use in the articles that you manufacture similar articles to those in evidence here?
A. The white.
Q. And how do you use them?
A. To bind seams.
Q. To finish the garments?

A. Finish—you could call it of course finish; binding is finishing, the same. [738]

Q. To cover up the roughness of the seam?

A. Yes.

Q. Doesn't it serve the purpose of a trimming by that use?

(Objected to, as it calls for the witness' opinion and conclusion. Objection overruled. Exception.)

A. Well, I could place it in this way, that it makes a better finish and a stronger finish.

247 Q. A garment is better trimmed with that on than without it? [739]

A. It improves the garment just as anything different in the garment would improve it.

Q. It improves it the same as a trimming would improve it?

A. No; I couldn't say that exactly, for this reason: We trim up garments, but when we say trimming we put on lace and embroidery. This is hardly a species of trimming, I would hardly say that.

MAX NEUBURGER, called as a witness on [740] behalf of the importer, being duly sworn, testified as follows:

By Mr. COMSTOCK:

Q. What is your business and under what name conducted?

A. Neuburger & Company, importers of embroideries and white goods.

Q. Wholesale or retail?

A. Wholesale.

Q. And how long have you been such a wholesale dealer?

A. 35 years.

Q. Please look at Exhibit A, returned by the [741] board in this case, and without regard to one pattern or another, but treating it as a unit, say whether you have dealt in such goods as that?

A. I have.

Q. For how long?

A. For 15 years.

Q. Please state the name or names by which at and before 1897 that merchandise was designated among merchants in the markets of this country.

248 A. Seam bindings, featherstitchings, featherstitch [742] bindings; half a dozen names I have heard.

Q. You have heard them called featherstitch braids, have you not?

A. I have.

Q. Are you familiar with the fabrication of goods sufficiently to say whether these goods here are braided or woven?

A. I am not familiar enough to say that.

Q. To what use are these goods put in your experience?

A. To cover up the seams made by manufacturers of underwear, children's wear, men's shirts, especially the colored goods, in all kinds of underwear. [743]

Q. Do you deal in cotton beltings?
A. No, sir.
Q. Do you deal in any other kinds of bindings besides seam bindings?
A. No, sir.

By the REFEREE:

Q. Do you deal in tapes, Mr. Neuburger?
A. No, sir.
Q. Don't handle them at all?
A. Don't handle them at all.
Q. Do you deal in any description of braids?
A. No, sir. [744]

Mr. COMSTOCK. I offer in evidence in this case the testimony of Herman Martin and the testimony of Samuel Jacobs, taken in the case of Dieckerhoff, Raffloer & Co., No. 768, heretofore tried in this court.

Same received and copied into the record herein as follows:

HERMAN MARTIN, being duly sworn as a witness for the collector and the Government, testifies as follows:

249 By Mr. VAN RENSSELAER: [745]

Q. What is your business, Mr. Martin, please?
A. I am in the manufacturing department of Martin & Lipser.
Q. What is their business?
A. Manufacturers of muslin underwear.
Q. How long have you been in that business?
A. I have been in that business for five years.
Q. In this city during that whole time?
A. Yes, sir.
Q. Have you during that time bought materials which are used in your business?
A. No, sir.
Q. Not had anything to do with the buying? [746]
A. I have never bought any goods that are used by them.
Q. Please look at the samples before you marked Exhibit "A," and say if you are familiar with these articles, or any of them?
A. We have used two numbers out of these attached to Exhibit "A."
Q. Which are these?
A. Nos. 605 and 606.
Q. You say you have never bought goods of that description?
A. Personally, no, sir.
Q. Have you ever been present when purchases of these goods have been made by your firm? [747]
A. Yes, sir.
Q. At wholesale?
A. Yes, sir.

Q. By whom were the purchases made when you were present?

A. By our superintendent of the factory and one of our firm.

Q. You have been with him when he has made purchases of these goods at wholesale?

A. Yes, sir.

250 Q. On a number of occasions? [748]

A. No; I could not recall the different occasions. We buy them quite often.

Q. You have frequently been with him when he made purchases of these goods?

A. Yes, sir; I have.

Q. And you have heard the name under which they were purchased?

A. Yes, sir.

Q. Now please state, Mr. Martin, by what name these articles were bought at wholesale in the markets of this country on October 1, 1890, and shortly before that date. [749]

Cross-examination by Mr. MACKIE (as to competency):

Q. Mr. Martin, there is a gentleman in your establishment whose business is to buy the goods that your firm uses?

A. Yes, sir.

Q. And he buys these goods from time to time whenever it is necessary?

A. Yes, sir.

Q. And you are not that gentleman?

A. No, sir.

Q. Did you personally ever buy an inch of the goods of the character of the samples before you, the samples attached to Exhibit "A"? [750]

A. No, sir.

(Counsel for the importers objects to the witness answering the last question addressed to him in the direct examination, as it appears from the witness's own testimony that he has never bought any of these goods, and any knowledge he may have as to their commercial designation is based entirely upon hearsay information, and therefore is entirely incompetent.)

251 By Mr. MACKIE: [751]

Q. What is your part of the business in connection with that firm?

A. I help make up the garments.

Q. You oversee the manufacture of them?

A. Partly.

Q. In the store and in the mill?

A. I see that the goods are made up right, and in fact I tell them partly how to get them up.

(Counsel for the importers renews his objection on the ground already stated.

The objection sustained.

Counsel for the collector and the Government excepts to the ruling.) [752]

Direct examination continued by Mr. VAN RENSSELAER:

Q. Do you know of your own knowledge to what use these articles like the samples before you, which you use in your business, are put?

A. They are used to cover the raw seam of a garment; used as a binding.

Q. In what class of garments, for instance?

A. In all kinds of garments.

Q. Underwear?

A. Underwear.

Q. Please state how they are applied; how they are put on? [753]

A. They are put on as a binding to cover up the different seams of a garment. We put them on wherever there may be a raw seam; to cover up the raw seams.

Q. Do you use in your business in that same connection perfectly plain bindings?

A. Yes, sir.

252 Q. What is the difference between the perfectly plain binding which you use and these articles which lie on the table before you, samples 605 and [754] 606 on Exhibit "A"?

A. It would not make any difference to us. We had just as soon use a plain binding as this kind of binding. We use both. We consider goods like these samples on Exhibit "A" a little stronger probably.

Q. Is there any difference between the effect produced of the plain binding on the garment and the article which you have before you?

A. No, sir; not that which we use.

Q. Is the plain binding as expensive as articles like the samples on the table before you—Exhibit "A"? [755]

A. I think the difference is very slight. It's no difference. I think the plain binding would come as high as this herringbone.

Q. Is it or is it not used in your business for the purpose of giving an ornamental effect to the seam as well as to cover it?

A. I can't exactly say that it does.

SAMUEL JACOBS, being duly sworn as a witness for the collector and the Government, testifies as follows:

By Mr. VAN RENSSELAER: [756]

Q. What is your business, Mr. Jacobs?

A. Manufacturer of ladies' undergarments.

Q. Whereabouts, and with whom?

A. No. 11 Lispenard Street; by myself; under the firm name of the Acme Underwear Company; but I am the proprietor.

Q. How long have you been engaged in that business?

A. About three years.

253 Q. Please look at the samples before you on Exhibit "A," and say if you are familiar with these [757] or any of them?

A. Yes; with two numbers, Nos. 605 and 606; something similar to that, of that nature.

Q. Have you bought these articles in the markets of this country or this city at wholesale for the purpose of using in your business?

A. Yes, sir, buy it every little while.

Q. On October 1, 1890, that is about two years ago, and shortly before that time, did you buy them?

A. Yes, sir; very frequently; every week or two.

Q. Please state by what name these articles were known at that time in trade and commerce of [758] this country at wholesale?

A. Herringbone trimmings. That is all we call for in the establishment where we buy the goods.

Q. Please state for what purposes these goods are used in your business.

A. I use it principally for ladies' night gowns; also for other purposes, but the principal use is for ladies' night gowns; that is, the bulk of it is used for that purpose.

Q. How are the articles applied to these garments?

A. It is put across the front and back of the garment, just where it is necessary. [759]

Q. Is it put on for ornament?

A. For covering seams.

Q. Does it give an ornamental or dressy effect to the seam?

A. Somebody may call it so; we don't do it for that purpose.

Q. You say some people might call it an ornamental or dressy effect?

254 A. Women might. I never heard such a description about it. They use it simply for binding. It [760] is called herringbone, and the other simply a plain binding.

Q. On the edge of the garment or for the seams?

A. Over the seams.

Q. You never put it on the edge of a garment?

A. No.

Q. Do you make any other use of these articles in your business?

A. As I say, we use it principally for ladies' night gowns; also for ladies' skirts and chemises, but principally used on night gowns. The most of it is used to cover raw seams. [761]

Cross-examination by Mr. MACKIE:

Q. Do you have a buyer?

A. No, sir.

Q. Do your own buying?

A. I do.

Q. You say you have been in this business about three years?

A. Yes, sir.

Q. Can you tell us about when you began this business?

A. I began in June, 1889.

Q. In 1889 or 1890?

A. 1889. [762]

Q. What was your business before that?

A. I was in the retail business—the dry goods business.

Q. Do you make any garments on which you do not use articles like Nos. 605 and 606 on Exhibit "A?"

A. Yes, sir.

Q. A good many garments on which you do not use such articles?

A. Considerable.

255 Q. Approximately, about how much in your [763] business do you use of articles like Nos. 605 and 606 on Exhibit "A"?

A. That would be hard for me to state, because at times we use this exclusively, and at other times we use some plainer style, and in fact lots of times it does not matter whether we use articles like these or plain binding—whatever the foreman has that is most handy he takes.

Q. How many gross of these samples would you use in a year, samples like Nos. 605 and 606?

A. I could not say; it may be a hundred gross; it may be 200 gross.

Q. Have you any idea how much you used in 1890? [764]

A. A good deal less than we used last year and are using now.

Q. About fifty gross?

A. Probably. They don't go a great ways. As soon as we need them we send over to some of the stores and just buy as much as we want; sometimes we get an importation of it.

Q. When you do buy it you send a boy over to some of the stores with an order to send you so much of such and such an article?

A. To send me herringbone of such a number, and so on.

Q. When you order you usually say. "herringbone" of such a number? [765]

A. Yes, sir; and they know what we want.

Q. Do you use any galloons in your business?

A. No.

Q. How many times in 1890 do you suppose you had occasion to personally go to some place to look over the stock and actually get a bill of this stuff, articles like Nos. 605 and 606 on Exhibit "A"?

A. I could not say.

256 Q. Once or twice? [766]

A. Once or twice I should say, because we usually buy a good many gross when we buy it.

Redirect examination by Mr. VAN RENSSELAER:

Q. In 1890 you said you might have used fifty gross of this stuff; you might have used two hundred gross?

A. No; I am quite sure that I did not.

Q. You might have used one hundred gross?

A. I don't think so, because my business was very small then.

Q. At the present time you are using a good deal more? [767]

A. No, I may have not used fifty gross that year for all I know. I don't suppose I exceeded fifty gross. My business was small then. You know we creep before we walk. I had just started my business then.

Q. You are using a great deal more to-day?

A. Yes, fifty times more.

Recross-examination by Mr. MACKIE:

Q. I suppose fifty gross of this stuff would be a pretty good start in your business?

A. Yes, sir. [768]

Q. About how much would you buy at one time?

A. I would consider fifty gross a good deal of stuff for that nature—trimming.

Q. How many yards in a gross?

A. 144 yards; supposed to be.

Adjourned.

Importer rests.

257 C. M. VOM BAUR *vs.* THE UNITED STATES. } (No. 3640.) [769]

Before Hon. William B. Howell, as officer of the court.

Appearances: For the importer: Comstock & Washburn; for the United States: Charles Duane Baker, Esq., assistant U. S. attorney. [770]

CHARLES S. KING, called as a witness on behalf of the United States, being duly sworn, testified as follows:

By Mr. BAKER:

Q. Mr. King, you testified as a witness in this case before the Board of General Appraisers, did you not?

A. I did.

Q. Mr. King, with what firm are you now identified?

A. Sanford Narrow Fabric Company. [771]

Q. The same concern that you were connected with when this examination was held before the Board of Appraisers?

A. The same.

Q. What has been your experience in the selling of bindings, tapes, braids, etc.?

A. I have been selling goods, bindings, tapes, and braids, from both the manufacturers and jobbers, at wholesale, and retailers, for ever since 1888.

258 Q. Are you familiar with the uses, in your [772] experience as a wholesale dealer and manager, to which featherstitch braids are put?

A. Yes; I am thoroughly conversant with practically all of their uses.

Q. You are familiar with the exhibits in this case, are you, presented before the Board of General Appraisers?

A. The other exhibits; yes.

Q. You saw them?

A. I saw them all; yes.

Q. Now, what has been, in your experience during the time you have been such dealer and manager, as you have stated, what has been the [773] commercial designation of the merchandise involved?

A. They are known as featherstitch braids, sometimes as herringbone braid, but practically featherstitch braids in almost every instance that I can ever remember.

Q. Have they been bought and sold at wholesale in trade and commerce during that time as featherstitch braids?

Mr. COMSTOCK. I should like to record an objection to this testimony as being a repetition.

A. Yes.

Q. Mr. King, are you familiar with the uses to [774] which featherstitch braids so-called have been applied during the time that you have been familiar with them?

A. Yes; I am very familiar with them.

Q. Can you state what is their use, I mean their general use, as you sold them?

A. They are used almost entirely, I may say absolutely, as a trimming on various garments for ladies' wear, children's, as well as men's wear; that is, night robes, work shirts, and garments of that description.

259 Q. Mr. King, I show you an article here, a [775] child's dress, is it not?

A. Yes.

Q. Now, will you tell us where and in what way the featherstitch braid has been applied to the garment in question? Can you point out on this article I show you the featherstitch braid, if that is one?

Mr. COMSTOCK. I object to this line of inquiry.

Mr. BAKER. It appears in evidence in this case that this featherstitch braid is used on children's garments. Now, I want to show how the featherstitch braid is used on the garment. [776]

Mr. COMSTOCK. I think it is distinctly objectionable.

The REFEREE. I shall sustain the objection of counsel until we know something about that garment.

Answer insisted upon and admitted under Rule XI.

Q. Point out on the garment shown the featherstitch braid, what is known as the featherstitch braid?

A. The featherstitch braid is the black and white braid that is used on the edge of the collar, [777] on the edge of the sleeves, and two rows of it are sewed around the belt of the garment [indicating].

Q. Will you examine the garment and state whether the featherstitch braid is used on it for a seam binding, that is, for binding the seams?

Mr. COMSTOCK. Objected to on the ground that the witness has not properly qualified himself to testify about seam or any other kind of bindings.

(Objection overruled. Exception.)

260 Q. Will you point out on the garment before you [778] the seam binding and where it occurs?

A. The seams are bound on the inside of the arm holes with the seam binding, and also at the belt on the inside with a seam binding.

Q. Now, Mr. King, is that which you have designated as a seam binding known, and has it been known in trade and commerce before 1897 and since, as a featherstitch braid?

Mr. COMSTOCK. Objected to on the ground that the witness' competency has not yet been shown.

(Objection overruled. Exception.)

A. No. [779]

Q. Mr. King, during the time that you have stated in which you have been a dealer in featherstitch braids and other braids, have you known a featherstitch braid used for the same purposes as the seam bindings referred to in the garment in question?

Mr. COMSTOCK. I object to that on the ground that this man is not a manufacturer of garments. He is asked to testify as to whether he knows their use for certain purposes or not.

(Objection overruled. Exception.) [780]

A. No, I have not. It is impossible to use a featherstitch braid in the same way in which these bindings have been used.

Q. Are you familiar in the course of your trade, in selling braids in the trade, with articles such as are before you now, from an examination of it, in the trade?

A. Yes, I am quite familiar with them.

261 Q. Do you know the nature and character of the article that I now show you from your knowledge [781] as a manufacturer of braids and from your familiarity with the trade?

A. I do.

Q. What is it (same article shown witness before)?

(Objected to.)

A. It is a child's dress.

Q. Is it an ordinary general article of trade and commerce?

(Objected to.)

A. It is. We frequently trim up the raw goods, [782] match the braid before they are put into the garment, in hundreds of cases, before they buy a yard of braid; they want to see how it matches the cloth.

Q. Mr. King, as a wholesale dealer in braids, as stated, do you sell at wholesale to the manufacturers of such articles, child's dress, as this?

A. I do.

Q. For the purpose of trimming such articles?

(Objected to as leading.)

Q. For what purpose do you sell them?
A. For trimming purposes.
Q. Such articles as this? [783]
A. For such uses as that; yes.
Mr. BAKER. I offer this article (child's dress) in evidence.
Mr. COMSTOCK. I renew my objection to the admission of this article.
(Objection overruled. Exception.)
(Said article marked "Illustrative Exhibit A–1.")

262 Q. I show you now an article, child's dress; are [784] you familiar with that as you have come in contact with it at the manufacturers and in selling braids?
A. I am.
Q. Will you point out on that where a featherstitch braid is used, if it is used at all?
Mr. COMSTOCK. Objection renewed to the testimony respecting an unidentified sample.
The REFEREE. I make the same ruling until the article is identified.
Answer insisted upon and admitted under Rule XI.
A. A featherstitch braid is used on the collar, [785] around the neck, on the little cape over the shoulders, and down the front and back and also at the end of the sleeves.
Q. Will you tell us where the featherstitch braid is used in any other portion of that article for the purpose of seam bindings?
A. No, there is no more featherstitch braid used on it.
Q. Will you tell us whether the seams are bound or not?
A. The seams on the under side of the waistband are bound with seam binding.
Q. Are they bound with a featherstitch braid? [786]
A. No.
Q. With what are they bound, from your knowledge in trade and commerce of bindings?
A. They are bound with a seam binding.
Q. With what is known in trade and commerce as a seam binding?
A. Seam binding; yes.
Q. You are familiar with the article from selling to the manufacturers of it?
A. I am; yes.

263 Q. Have seen similar articles at various times [787] in the course of your wholesale dealings with manufacturers?
A. I have seen thousands of them. One of those articles I bought at Wanamaker's and the other at Siegel-Cooper's.
Mr. BAKER. I offer in evidence this sample (child's dress) shown the witness.
(Same objection. Objection overruled. Exception.)
(Sample received and marked "Illustrative Exhibit B–1.")
Q. How was this known in trade and commerce [788] [showing witness another sample]?

Mr. COMSTOCK. Objected to unless the witness is shown to be qualified to answer.

A. That is a better quality of stay binding, seam binding, specifically known as a super-tape.

(Sample offered in evidence. Same received and marked "Illustrative Exhibit C–1.")

Q. Mr. King, will you kindly look at that article [showing witness an article]; are you familiar with articles of that kind? [789]

A. I am.

Q. By what name is that known in trade and commerce?

(Same objection. Objection overruled. Exception.)

A. As a seam tape.

Q. Mr. King, I call your attention to what you call the seam binding in Illustrative Exhibit B–1.

A. It is the same thing as this just shown me.

264 Q. Is the exhibit that I now show you the same [790] as what you call the seam binding in Illustrative Exhibit B–1?

A. It is.

Mr. BAKER. I offer this sample in evidence.

(Same received and marked "Illustrative Exhibit D–1.")

The WITNESS. The seam binding on Exhibit B–1 is wider and of a cheaper quality than Exhibit D–1, otherwise they are exactly the same.

Q. Mr. King, I show you another sample; will you kindly look at that; are you familiar with goods of that character? [791]

A. I am.

Q. By what is that known in trade and commerce?

A. They are known as seam tape, seam bindings.

Q. To what use are they applied, from your knowledge of the trade?

A. Used for binding seams.

Mr. BAKER. I offer that sample in evidence.

Mr. COMSTOCK. Objected to on the ground that the witness is incompetent to testify as to their commercial designation.

(Objection overruled. Exception.)

(Said sample received and marked "Exhibit E–1.") [792]

Mr. BAKER. I also offer in evidence another sample.

(Same objection. Objection overruled. Exception.)

(Same received and marked "Illustrative Exhibit F–1.")

Q. Are you familiar with the article I now show you?

265 A. Yes, sir. [793]

Q. By what name was that known?

A. Seam tape; seam binding.

Mr. BAKER. I offer this sample in evidence.

(Same objection, same ruling and exception.)

(Same received and marked "Illustrative Exhibit G–1.")

Q. I show you another sample; by what name was that known in trade and commerce?

A. Stay binding, seam binding, stay tape.

Mr. BAKER. I offer that in evidence.

(Same objection, same ruling and exception.)

(Same received and marked "Illustrative Exhibit I–1.") [794]

Q. I show you these four sample cards; are you familiar with merchandise of that character?

A. I am.

Q. Have you manufactured it?

A. I have.

By Mr. COMSTOCK:

Q. Did you manufacture this?

A. No.

By Mr. BAKER:

Q. During the time in which you have been engaged [795] in trade and manufacture of that kind, by what name were they known?

A. Featherstitch braids.

Mr. BAKER. I offer the four sample cards in evidence.

(Same objection, same ruling and exception.)

(Same received and marked collectively "Illustrative Exhibit J–1.")

266 Q. Mr. King, I understand you are a manufacturer, [796] wholesale largely, of featherstitch braids?

A. I am.

Q. I show you these samples; are you a manufacturer of goods of that character?

A. I make all of these.

Q. You manufacture those?

A. Yes, sir.

Q. That is, the company which you represent?

A. Yes, sir.

Q. By what name are they bought and sold at wholesale in the commerce of this country?

A. Featherstitch braids. [797]

Mr. BAKER. I offer those in evidence.

(Same received and marked "Illustrative Exhibit K–1.")

Q. With reference to the last exhibit (K–1), do you know the use to which they are applied in the wholesale business of this country?

A. I do.

Q. To what use are they applied?

(Objected to.)

A. Many of them are what we term edgings, that [798] is, they are to be sewed at the edge of a garment; the others are applied for trimming purposes, while the edgings are applied as trimmings also, although they don't appear on the garment in the same manner as the other braids.

Q. What do you mean by "other braids"?

A. The braids that are made even on both sides.

Q. With the uniform edges?

A. Yes. They wouldn't be applied as an edging.

267 Q. In your experience as a wholesale dealer and [799] manufacturer, are they bought and sold for the purpose of seam bindings as such?

A. They are not.

Q. Will you kindly look at the samples I now show you? Is that from your firm?

A. This is a German book.

Q. Are you familiar with the goods represented by that sample book?

A. I am.

Q. Are you from your experience as a wholesale dealer familiar with the name and the uses to which they are applied?

A. I am.

Q. By what name in trade and commerce since [800] 1897 and prior thereto were those known?

A. Featherstitch braids.

Mr. BAKER. I offer the sample book in evidence.

Mr. COMSTOCK. I strenuously object to the receipt of a sample book of so-called featherstitch braids made by some other house and in no way identified with this case.

(Objection overruled. Exception.)

Mr. COMSTOCK. I desire to spread on the record my objection to it, that this alleged German sample book has not been introduced by anybody competent to produce it. [801]

(Objection overruled. Exception.)

(Said sample book received and marked "Illustrative Exhibit M–1.")

Q. I show you another sample; are you familiar with garments of that character?

A. I am.

Q. What is it?

A. That is a night gown or a night shirt.

268 Q. Will you point out to the referee where [802] featherstitch braids are used in or about the article?

A. Yes; they are used around the collar, down the front, across the pocket, and at the end of the sleeve, on the cuffs.

Q. Are they used anywhere else?

A. Nowhere else.

Q. Will you look at and tell us whether seam bindings of any kind are used about it?

A. No; they are not; no seam binding on it.

Q. As a manufacturer of and dealer at wholesale in featherstitch braids, do you sell them to the manufacturers of night shirts? [803]

A. We sell all of the large and in fact almost all the manufacturers of those garments.

Q. And for the purpose of attaching them?

A. For that purpose, yes.

Mr. BAKER. I offer that sample in evidence as an exhibit.

Mr. COMSTOCK. Objected to on the same ground as the others.

(Objection overruled. Exception.)

(Sample received and marked "Illustrative Exhibit N–1.")

Q. Will you kindly look at these samples I now [804] show you? Are you familiar with merchandise or articles of that character in trade and commerce?

A. I am.

Q. Do you manufacture goods of that character?

A. I have manufactured some of them.

Q. You know their general character and designation?

A. I do.

Q. From your experience as a wholesale dealer and manufacturer?

A. I do.

269 Q. By what name generally are they known in [805] trade and commerce?

(Objected to.)

A. As Renaissance braids, Honiton braids, Duchesse braids, Battenberg braids.

Mr. BAKER. I offer these in evidence.

(Samples received and marked collectively "Illustrative Exhibit O–1.")

Cross-examination by Mr. COMSTOCK:

Q. You testified in this case at the hearing before the Board, Mr. King?

A. I did; yes. [806]

Q. Did you hold the same position then that you now hold in the Sanford Narrow Fabric Company?

A. Practically the same; yes.

Q. What was that position and what is it?

A. Manager, and I am now president.

Q. You have told us at the outset of your testimony this afternoon that you have had an experience dating back to 1888, I believe?

A. I have.

Q. When did your experience with the Sanford Company begin?

A. In 1896, latter part of 1896.

Q. That is when this concern, corporation, was [807] organized, was it?

A. About then; yes.

Q. And you began putting goods on the market six or eight months later?

A. No; we began putting goods on the market immediately.

Q. Where had you been prior to the latter part of 1896?

A. I was proprietor of J. O. King & Co.

270 Q. Where were they? [808]

A. At 76 Franklin Street, the same place that I started the featherstitch braid business.

Q. Providence, Rhode Island?

A. 76 Franklin Street, New York.

Q. And what was the business of J. O. King & Co.?

A. J. O. King & Co. handled spool cotton, stay bindings, supertapes, spool tapes, spool braids, knitting cotton, that is about all.

Q. What was it, a manufactory or a store?

A. Manufacturers, yes; and agents for mills.

Q. Domestic?

A. All domestic; yes. [809]

Q. How long were you there in business?

A. Since 1865.

Q. And your connection with them began in 1888?

A. In 1888; yes.

Q. Did they manufacture and sell goods like the official exhibits in this case?

A. What do you mean by the official exhibits?

Q. Exhibit 1, the alleged featherstitch braids, the goods which are the subject of this suit?

A. King & Co. handled goods like Exhibit C–1.

Q. Did they handle or sell what you refer to as featherstitch braids? [810]

A. They did not.

Q. When did this concern move to Providence, the Sanford concern?

A. They are not in Providence; they are still in New York.

Q. Their place of business in this city?

A. Yes, sir.

Q. And their office is here?

A. Yes, sir.

271 Q. About how many people do you employ, Mr. King? [811]

A. Where, in New York?

Q. How many factories have you got?

A. We have got about four or five; five, I think.

Q. Where are they?

A. Barnstead, N. H.

Q. About how many men have you got there?

A. About fifteen there I should say.

Q. Where are the other places?

A. At Pawtucket, R. I.

Q. How many do you employ there?

A. Between forty and fifty.

Q. Where else?

A. At Worcester. [812]

Q. How many men do you employ there?

A. Forty or fifty there.

Q. Where else?

A. Springfield, Mass.

Q. How many there?

A. I should say between forty and fifty there.

Q. Any other place?

A. We have goods made for us in Valley Forge, R. I.
Q. On an extensive scale?
A. Not very largely.
Q. Get them from any other source?
A. Practically no other source. [813]
Q. Known any other factory that you have got?
A. No.
Q. Anybody else making those things in this country so far as you know?
A. Oh, yes; a good many of them.
Q. Who are making so-called featherstitch braids?
A. Making featherstitch braids, yes.
Q. At the present time you deal in almost nothing except featherstitch braids; is that right?
272 A. That is correct, yes. [814]
Q. What else do you deal in, if anything?
A. We sell some webs, a few tapes.
Q. Do you make those things?
A. Yes.
Q. Like anything that you have got in this case?
A. Yes, like Exhibit C–1; we make some goods like that on occasions.
Q. At what stage of your business career have you made braids like Exhibit O–1?
A. We are making some of them now.
Q. I thought you made nothing except featherstitch braids and webs and a few tapes?
A. Yes; Honiton braids, figured, the same thing [815] exactly; they are made on the same kind of a machine as featherstitch braids.
Q. You deal in Honiton braids?
A. We do; Renaissance, Honiton, various names.
Q. What else do you deal in?
A. That is all, except featherstitch braids and the other goods that I have stated.
Q. To whom do you sell your Honiton and Renaissance braids?
A. Lace curtain manufacturers.
Q. Can you mention some of your customers?
A. Yes; the Manhattan Ruffle Curtain Co., S. Baerlein, Cohn Bros. [816]
Q. All New York people?
A. No; we sell even in Canada.
Q. I mean those three that you have mentioned?
A. Those three; yes, sir.
Q. Are you at the factory or at the office most of the time?
A. My time is almost evenly divided between the two places.
Q. What were you doing in the early days of the starting of this concern, the Sanford Company?
273 A. I was trying to manage the business and put [817] it on its feet.
Q. What time did you begin to sell these goods?

A. I came in contact with all the transactions of the firm and sold the goods personally to the trade; I should say I began more extensively identified in the selling about 1899 perhaps; that is, making personal sales.

Q. But up to that time you hadn't made personal sales?

A. I had not, except in a few instances, perhaps.

Q. Where did you get these cards which are marked "Exhibit J–1"?

A. Sent to me from Germany.

Q. Did you write for them? [818]

A. Yes, I wrote for some; I don't know that these particular cards I wrote for; we have had cards from German manufacturers for years, and in some cases we got them through the importers and in some cases the German manufacturers would send to us direct.

Q. But you did write to Germany for some, did you?

A. Yes; we have written to Germany.

Q. For the purpose of this case?

A. No, sir.

Q. Are you able to say what firm in Germany makes these goods? [819]

A. I have the entire list of the German manufacturers at the office.

Q. Do you happen to know what particular firm made these particular goods?

A. No; I do not know.

Q. Referring to this illustrative exhibit which is marked "D–1," when and where did you deal in that article?

A. I never dealt in this.

274 Q. Referring to the article which is marked "G–1," when [820] and where did you deal in that?

A. Never dealt in this personally. We used to come in competition with it.

Q. Referring to the article marked "Illustrative Exhibit E–1," when and where did you deal in that?

A. I will say the same to this as I did to the other article.

Q. Referring to the article marked "Exhibit F–1," when and where did you deal in that?

A. The same answer as to the other question.

Q. What do you say about Exhibit C–1; do you deal in that?

A. Yes. [821]

Q. When you were with the J. O. King Co.?

A. Yes, sir.

Q. That precise article?

A. That precise article.

Q. These featherstitch braids, co-called, are used in binding underwear, are they not?

A. No, they are not; they are applied on underwear, but I shouldn't say that they were used in binding underwear.

Q. Are they never used to cover the seams of underwear?

A. I have seen them applied on underwear and sewed on the seams.

Q. They conceal the seam in cases of that kind, [822] many cases?

A. Necessarily if they are put over a seam they conceal it, except some of the braids which are open work, and it is absolutely impossible to cover a seam with them.

Q. Have you ever seen them used to cover the seams of night gowns?

A. I shouldn't say that I have seen them used to cover seams; I don't know that they are applied for any such purpose as that;
275 the people that we sell the goods to, to my knowledge, personal [823] knowledge, always ask for these goods as a trimming.

Q. Is that true of all your customers?

A. Of the night gown trade and the other trade as well.

Q. Then of all your customers.

A. Of all of our trade; yes.

Q. Do you undertake to say that Samstag & Hilder Bros. ask for them as trimmings?

A. They sell them for such.

Mr. COMSTOCK. I object to that.

Q. Do they? [824]

A. They ask for them as featherstitch braids.

Q. Then they don't ask for them as trimmings?

A. They don't use the garments themselves.

Q. You say all your customers ask for them as trimmings. I want to know whether Samstag & Hilder Bros. do that?

A. They ask for them as featherstitch braids.

Q. And not as trimmings?

A. And not as trimmings. I referred in my previous answer to the garment manufacturers—the people who use those goods and cut them up and sew them on garments.

Q. You make these goods with and without the ornamental figures, do you, now? [825]

A. No; all with ornamental figures.

Q. Then the ornamental figure is what they call the herringbone.

A. Herringbone applies to one design only. There is a class of designs.

Q. May these ornamental figures be both colored and white?

A. They are both white and colored; yes.

Q. Which variety do you manufacture in the larger quantities?

276 A. We sell in the aggregate probably more of [826] the colored goods than we do of the white.

Q. On the other hand, you make the white goods more than any other single design of the colors; is that right?

A. In the aggregate, pattern for pattern. For instance, we make a pattern in both white and in colors. There will be a great many more in colors used than there will be in white.

Q. You mean that you turn out and sell more?

A. Then we have to make more; yes.

Redirect examination by Mr. BAKER:

Q. Mr. King, with reference to Exhibits E–1, [827] F–1, G–1, and I–1, from what firm were those obtained?

A. I obtained most of them from John Wanamaker & Co. in Philadelphia; at their notion counter.

Q. Are they, from your knowledge and experience in the trade, a well-known article of commerce?

(Objected to.)

Q. Are they the well-known general article, bought and sold in the wholesale trade in this country under the designations as they are labeled? [828]

Mr. COMSTOCK. I object to any testimony on the part of this witness of the commercial designation of articles he does not deal in.

(Objection overruled. Exception.)

A. They are.

Q. Mr. King, I show you Exhibit O–1. Are you familiar with the method of manufacture of those articles?

A. I am.

277 Q. Will you tell us how they were manufactured? [829]

Mr. COMSTOCK. I object to that unless it transpires that Mr. King makes all these articles.

A. I am familiar with the manufacture of most all of them.

Q. How have you become familiar with their mode of manufacture?

A. I have seen them making a great many of them; I have made some of them myself; I have been to the factories in Germany and seen them made there, and in this country as well. There are very few made here of the lace ones. [830]

Q. Can you tell us by what method of manufacture they are produced?

A. Some of them are made on braiders; I think there are three or four here that are made on braiders. Most of the others, all of the others, with probably two or three exceptions, are made either on lace machines or on looms.

Recross examination by Mr. COMSTOCK:

Q. The only varieties which you yourself fabricate I think you have told us in this Exhibit O–1 are the Honiton and Renaissance? [831]

A. Those are practically all called Honiton braids or Renaissance braids, Battenberg braids and Duchesse braids.

Q. Referring to illustrative Exhibits A–1 and B–1, did you personally purchase those?

A. I personally purchased them.

Q. Picked them out, did you?

A. Yes.

Q. When did you get them—a day or two ago?

A. No; I had one of them for the other case; it was never put in.

278 Q. And the other one? [832]

A. I purchased a month or two ago.

Q. Since notice of this hearing came to you?
A. No.
Q. Did you get the night gown there, illustrative Exhibit N–1?
A. I did.
Q. How recently did you buy that?
A. A month or two ago.

ALBERT TURNER, called as a witness on behalf of the United States, being duly sworn, testified as follows: [833]

By Mr. BAKER:

Q. Mr. Turner, are you in the dry goods business?
A. I am interested in the dry goods business now.
Q. How long have you been interested in the dry goods trade?
A. Wholesale dry goods since February 11th, 1884.
Q. And were you engaged in the wholesale trade in 1897?
A. Yes; I was in 1897.
Q. At that time and prior? [834]
A. Prior, yes.
Q. What was the character of the goods in which you dealt?
A. Covering the period from 1884 until 1897, I was in the wholesale notion business.
Q. Did that include braids, trimmings, articles of that character?
A. All that character of goods.

279 Q. During the time that you were engaged in the wholesale trade, Mr. Turner, were you familiar and did you deal in goods of the character [835] represented by the importation here (showing witness samples put in before the Board of Appraisers)?

A. Yes.
Q. Were you familiar during the time you have stated with the trade name by which articles of that kind were bought and sold in the commerce of this country at wholesale during that time?
A. I was familiar with the name.
Q. Will you state what was the commercial name?

By Mr. COMSTOCK (as to competency):

Q. Mr. Turner, with what firm were you interested in this business? [836]
A. During that period of years?
Q. Yes.
A. From 1884 until 1889 I was with Birkwalter & Company of Chicago.
Q. During those five years?
A. Yes; from 1884 to 1889 the firm was James H. Walker & Co. They were wholesale and they had a large retail store, too, but I was in the wholesale department.
Q. In what capacity?
A. At first I was a salesman and afterwards I was a buyer in the notion department.

Q. What did that include? [837]

A. That included merchandise of this kind, and silk thread, spool cotton, corsets.

Q. As a buyer?

A. Yes; I bought those goods for the house.

Q. Go on.

A. Later I bought them; first I was a salesman and sold the goods for them. And in 1889 I went with Sweetser & Pembroke Company and I was a buyer in the notion department here in 1889, 1890,
280 and 1891; and from 1891 till 1897 I was in business for myself in this same line under the name of [838] Alfred Turner & Co. at 337 Broadway, 76 Frankfort, and 93 Franklin. I was also interested in another retail dry goods business, which I supplied, in which I am yet interested.

Q. This A. R. Turner that you speak of, from 1891 to 1897, they were retail dealers, too?

A. Wholesale dealers.

Q. And retail?

A. I am interested in a retail store; that was not in New York.

Q. Are they in business now?

A. They are.

Q. I mean A. R. Turner & Co.? [839]

A. They are still in business.

Q. Are you still with them?

A. I still own half the store.

Q. Are you still with them?

A. I do some work.

Q. What time in 1897 did you sever your active connection with Alfred Turner & Co.?

A. I have never severed my active connection with it; I am drawing my profits.

Q. Are you giving your time to it?

A. Some.

Q. But not your whole time?

A. No, sir.

Q. Very little of it? [840]

A. Not much.

Q. Kind of a silent partner?

A. I own a half interest. My brother is the other partner and I see him every week. I know pretty well what is going on.

Q. Have you any other business?

A. Oh, yes.

By Mr. BAKER:

281 Q. (Direct question repeated.) Will you state what was the commercial name (referring to [841] samples representing the importation in question)?

A. Featherstitch braids.

Q. And they were uniformly and generally sold under the name?

A. Yes.

Q. Were they bought and sold as seam bindings or as tapes?
A. Seam bindings and tapes were an entirely different article.
Q. They were not bought and sold as such?
A. They were not.

Cross-examination by Mr. COMSTOCK: [842]

Q. Ever hear these called herringbone binding?
A. I have heard them called herringbone braids, but not herringbone bindings.
Q. Ever hear them called herringbone, just herringbone?
A. No.
Q. How extensively did you deal in them?
A. Very extensively.
Q. Give us some idea?
A. I suppose we carried a line of a hundred patterns in featherstitch braids all the time, and sold them.
Q. Where did you get them?
A. We imported some of them direct and others [843] were bought from importers like Dieckerhoff, Raffloer & Co. and that kind of firms. They made up sample cards, and they were labeled "featherstitch braids" on the sample cards when we got them from them.
Q. You say you give that from memory?
A. Yes. I used to get up the sample cards and look them over carefully for the men who went on the road.
Q. And your salesmen sold to various dealers all over the country?
282 A. Yes. Dealers came in the house and asked [844] for them; called for featherstitch braids. In the West we sold them principally in the territory tributary to Chicago; in New York we sold them all over the country.
Q. You mean when you came to New York?
A. Yes.
Q. Did you ever hear the term featherstitch binding used in connection with these goods?
A. I never heard it called featherstitch binding.
Q. In fact the only name that you do now recall is featherstitch braids?
A. I am quite positive as to the term, because I can distinguish between the lines of samples that [845] went on the road which were known as bindings and what were known as featherstitch braids.
Q. What time in 1897 did you sever your active connection with Alfred Turner & Co.?
A. I sold out my business in 1897; I sold out that part of my wholesale business in 1897.
Q. And what part of 1897?
A. I liquidated all during 1897. I was liquidating that part of my wholesale business all during 1897; it took me pretty much during the whole year. I was in the store very little, but I went into the store to get my money; I had to collect some accounts.

Q. What time did you leave the store? [846]
A. In 1897.
Q. What year—1895, 1896?
A. In 1897 I sold out the store.
Q. Prior to that time you had been giving your whole time to the business?
A. Whole time, talent, and attention to the business.
Q. And since then only to draw your profits?
A. Yes; keep tab on it and keep in touch with the business.
283 Q. What is your principal business now, Mr. Turner? [847]
(Objected to as incompetent and immaterial.)
Q. Will you state on the record your principal business at the present time?
A. For instance, I have been giving the last month a great deal of time on real estate that I own. I have been giving some attention to the bank in which I am interested.
Q. Is there any large corporation or business with which you are actively identified at the present time?
(Objected to.) [848]
A. I am not identified with any dry goods business in this country except my retail business outside of this city. I am not identified with any dry goods business in this city.
Q. Are you identified with the Sanford Narrow Fabric Company?
A. In no way whatever, directly or indirectly.
Q. Any business relations with Mr. King or Mr. Gardner?
A. I have had business relations with Mr. King.
Q. Quite extensive?
A. Not very extensive; very, very small.
Q. Anybody else in the Narrow Fabric Company? [849]
A. I don't know anybody else in the Sanford Narrow Fabric Company.
Q. Did you come here at Mr. King's request?
A. Yes, sir.
Government rests.
Testimony closed.

(Endorsed:) U. S. Circuit Court. Filed Apr. 1, 1905. Southern District, New York. John A. Shields, clerk.

284 United States Circuit Court, Southern District of New York. [850]

A. STEINHARDT & BRO. *vs.* THE UNITED STATES. } No. 3215.

Before Hon. Marion DeVries, as officer of the court. [851]
Appearances: For the importers, Albert Comstock; for the United States, Charles D. Baker, asst. U. S. attorney.

MORRIS STEINHARDT, called as a witness on behalf of the importers, being duly sworn, testified as follows:

By Mr. COMSTOCK:

Q. Mr. Steinhardt, what is your business?

A. Buyer.

Q. For what house?

A. A. Steinhardt & Bro. [852]

Q. How long have you been such?

A. Eleven years.

Q. Where do you buy?

A. In foreign countries.

Q. Do you do the most of their foreign buying?

A. Yes.

Q. Are you familiar with the invoice descriptions of goods as imported by that house and what those descriptions mean?

A. Yes.

285 Q. Mr. Steinhardt, on the invoice covered by [853] this case there are various items described as cotton featherstitched braids. Do you know the nature of the goods which bear this term on your invoice?

A. Yes, sir.

Q. Can you show samples of them?

A. Yes.

Q. Please do. [Witness produces a book of samples.]

Mr. COMSTOCK. I offer in evidence so much of this book of samples as found under the heading "Featherstitched braids" running down and including the entire page on which No. 368 is found. [854]

(Same received in evidence and marked "Ex. 1 for importers.")

Q. Does this Exhibit 1 fairly represent the entire line of featherstitched goods as handled by your house?

A. It is not the entire line; it is most of it.

Q. I say does it fairly represent the line?

A. Yes, it does.

Q. Now, Mr. Steinhardt, you testify that you have been buying goods for your house abroad: I want to know whether or not you have also been engaged in the commercial transactions of the [855] house in this country?

A. Yes, sir.

Q. For how long?

A. Same time; eleven years.

Q. Now, I call your attention to these words found in paragraph 320 of the present tariff law: "Bindings," "beltings," "bandings," "bone casings," "cords," "ribbons," "tapes," "tubing" and

286 "webs or webbing." Say whether or not in your business any of those terms or all of them [856] are established commercial terms used and understood in trade?

A. All of them.

Q. How long has that been the case?

A. Since I have been in the business and longer.
Q. Since you have been in the business anyway?
A. Yes.
Q. Say whether any of those terms and if so which does in the usage and practice of your trade include Exhibit 1?
A. Bindings.
Q. What, if you know, is the use of these goods represented by Exhibit 1, the employment of them? [857]
A. The article is used for different purposes.
Q. Describe any of them that occur to you, any important ones?
A. It is used for covering seams.
Q. Is that a large and important use?
A. That is an important use; it is used for shirts, covering seams.
Q. And, if you know, tell us how that is done—where do they put this substance with relation to the substance?
Q. Is that a large and important use?
A. Just in the center to cover both ends.
Q. Am I to understand that while the two edges [858] of the sewn material are laid over beyond the seam this is put in turn over both of those edges?
A. Yes.
Q. Mr. Steinhardt, there are certain items on this same invoice described as Battenberg braids; are you familiar with the character of that article?
A. Yes, sir.
Q. Look at the little cutting that I now show you and say whether it is a proper sample of goods so described?
A. Yes, sir.
287 Q. Now, referring to this enumeration in [859] paragraph 320, say whether if any of said terms there used would in trade cover and include this article?
A. None of them.
Mr. COMSTOCK. I offer in evidence this sample of Battenberg braids.
(Same received in evidence and marked "Exhibit 2 for importers.")

Cross-examination by Mr. BAKER:

Q. How long have you dealt in this article represented by Exhibit 1?
A. Since I am in business; eleven years.
Q. In the wholesale trade? [860]
A. Only wholesale.
Q. In this country?
A. Yes, sir.
Q. What are they composed of?
A. Cotton.
Q. What is the component material of chief value?
A. Cotton.
Q. Are they all cotton?

A. Yes, sir; mostly cotton; there are some patterns made in silk, but the chief value is cotton.

Q. What is the difference between featherstitched braid and a plain braid?

A. A featherstitched braid—the article is made [861] on a tape; it is a tape; and some patterns are embroidered, simply to give the pattern.

Q. Under what trade name has this been bought and sold since you have been familiar with them?

A. They are both bought as seam bindings and they are bought as featherstitched braids, and herringbone; those are about the principal names.

Q. Buy and sell them under those names?

A. Bought and sold under those names.

288 Q. Is there a class of goods that you buy and [862] sell by the commercial designation of bindings exclusively?

A. We have some bindings; yes, sir.

Q. Will you describe what would be technically a binding in trade?

A. A binding is an article—it is a tape, of silk or cotton, for finishing articles, to finish the ends, to complete an article.

Q. About what width would they generally average?

A. Average from a quarter of an inch up to five-eighths of an inch.

Q. How does that correspond in size with this featherstitch? [863]

A. That is about a quarter of an inch; they come in different sizes, about the size I stated.

By Mr. COMSTOCK:

Q. Now, whether or not this description you have given answering the Government counsel as to the articles known in trade as bindings, whether that is a description of the characteristics of Exhibit 1? You said they are one-fourth to five-eighths inches, used to cover seams and to finish articles; does that properly apply to Exhibit 1, all of it?

A. Yes, sir. [864]

FRANK GANONG, called as a witness on behalf of the importers, being duly sworn, testified as follows:

By Mr. COMSTOCK:

Q. Mr. Ganong, what is your business and in connection with what house?

A. As lace buyer for A. J. Hague & Co.

289 Q. Is that a wholesale or retail house? [865]

A. Wholesale importing house.

Q. And how long have you been conected with the house?

A. Since March 1st, 1899.

Q. What were you doing prior to that?

A. In the same business.

Q. With another house?

A. Three years prior to that with Dieckerhoff, Raffloer & Co., and for the nine years prior to that with the H. B. Clafflin Co.

Q. So that in all there have been some fourteen years in which you have been connected with this line of business? [866]

A. Yes.

Q. Always at wholesale?

A. Always at wholesale.

Q. Always in this country?

A. Yes, sir.

Q. Examine Exhibit 1 in this case and say whether during the whole of that fourteen year period you have known and dealt in goods of this same general character?

A. Yes, sir.

Q. Consider the following words from paragraph 320 of the present tariff law, namely, "Bandings," "belting," "bindings," bone casings," "cords," "ribbons," "tapes," "tubings," [867] "webs or webbing." Say whether during how much if any of the fourteen year period referred to you have known these terms as terms of established employment in the trade?

A. All of the fourteen years.

Q. Say which one of them, if any one, covers and includes, according to the understanding and practice of commerce, the Exhibit 1 which I have shown you?

290 A. Under the head of binding, seam binding. [868]

Q. Has there been any one part of your experience when more than another that term has been recognized as covering these goods, or has it always been the case?

A. Always been the case.

(No cross-examination.)

Adjourned without fixing date.

United States Circuit Court, Southern District of New York. [869]

A. STEINHARDT & BROTHER
v.
THE UNITED STATES. } No. 3215.

Testimony taken before Hon. Marion DeVries, United States general appraiser, as an officer of the court, pursuant to an order dated ———.

NEW YORK, *December 2, 1893.* [870]

Appearances: Albert Comstock, Esq., for importers; Charles D. Baker, Esq., asst. U. S. attorney for the United States.

PHILIP J. KRACKEHL, called as a witness on behalf of the importers, being duly sworn, testified as follows:

291 By Mr. COMSTOCK: [871]

Q. Your full name, please.

A. Philip J. Krackehl.

Q. With what house are you connected?

A. Mills & Gibb, Grand Street and Broadway.

Q. With what department of the house are you connected?

A. Notion department.

Q. Is that a wholesale or retail department?

A. Wholesale department.

Q. How long have you been in that line of business?

A. Twenty-four years at Mills & Gibb's.

Q. Do you buy and sell goods?

A. Yes, sir. [872]

Q. Generally to the markets of the country?

A. Yes, sir.

Q. And have done so for some time prior to 1897?

A. Yes, sir.

Q. Mr. Krackehl, this case involves merchandise invoiced from abroad under the name of featherstitched braids. Are you familiar with merchandise thus described?

A. I am.

Q. Does your house carry it?

A. It does.

Q. Is that in your department? [873]

A. Yes, sir.

Q. How long have you dealt in it?

A. So far as I can recall, the last twenty years.

Q. Now, I call your attention to these words found in paragraph 320 of the present law, "bindings," "beltings," "bandings," "bone casings," "cords," "ribbons," "tapes," "tubing," and "webs or webbing." Say whether or not in your business any of these terms, 292 or all of them, are established terms used and understood in your trade. [874]

A. They are.

Q. Were they, or not, prior to July 24, 1897?

A. Yes, sir.

Q. State whether or not any one of those terms, and if so which one, the usage and practice of your trade include the featherstitched braids under.

A. Bindings and tapes.

Q. Each word covers them?

A. Yes, sir.

Q. What is the predominant use of featherstitched braids? [875]

A. Covering for the raw edges inside waists and other wearing apparel.

Q. If you are sufficiently familiar with featherstitched braids, say whether they are produced by a braiding or weaving process?

A. I am unable to say.

Q. Do you handle, in your business, goods precisely like these you have testified about, with the exception of lacking the ornamentation—perfectly plain goods otherwise similar to them?

A. Well, we have the plain goods, and we have those ornamented, that is, fancy stitching on the surface of them.

Q. Are the former, as well as the latter, known [876] as bindings?

A. Known as tapes, seam covering, featherstitched braids, &c.

Q. They have all these names in trade?

A. Yes, sir.

Cross-examination by Mr. BAKER:

Q. Mr. Krackehl, do you remember the kinds of goods referred to?

A. Yes, sir.

293 Q. Will you describe them as you remember them? [877]

A. Well, they run in widths from about three-eighths to almost one-half of an inch in width; are more or less woven in fancy figures on the surface; some of white; some colored and white mixed; some have fancy edges; some plain edges—all are made entirely of cotton.

Q. How wide were the widest?

A. Well, up to generally about one-half inch.

Q. You have bought and sold these?

A. No, sir; I have not bought them—I have sold them.

Q. Your house deals in them?

A. Yes, sir. [878]

Q. And you are salesman for the house?

A. I am assistant buyer; and also sell goods.

Q. You do not buy this particular class of goods?

A. No, sir.

Q. Are you familiar with the commercial designation of these goods in the trade?

A. Yes, sir.

Q. What are they generally bought and sold as?

A. Featherstitched braids, tapes; sometimes called coverings; sometimes featherstitched binding—some call them bindings, some braids—mostly known as braids. [879]

Q. Do they ever amount to an ornamental feature when sewn on garments, as well as serve for purposes of binding?

A. I do not know. They are useful in covering seams which they are required to cover.

JOHN H. CONNELL, called as a witness on behalf of the importers, being duly sworn, testified as follows:

294 By Mr. COMSTOCK: [880]

Q. What house is yours, Mr. Connell?

A. H. B. Claflin & Company.

Q. What department of that house is yours?

A. Notion department.

Q. Is that a department where things are done at wholesale or retail?

A. Wholesale only.

Q. How long have you been in the same line of business?

A. Eighteen years with that house. Have been in business still longer.

Q. Do you deal in merchandise known as featherstitch or featherstitched braid or featherstitched [881] tape or herringbone?

A. I do.

Q. How many kinds of merchandise does it take to supply all the names I have asked?

A. It practically means one kind of merchandise.

Q. Has one article of merchandise all those names?

A. Yes.

Q. What other names are commercially applied to the same product?

A. Seam binding is the only other name.

Q. How long, to your knowledge, has the article been designated by all of these names in trade? [882]

A. About eighteen years.

Q. What is the use of that product, Mr. Connell?

A. It is used for covering seams of undergarments, and it is also used for trimming underwear.

Q. What substance or substances is it made of, as known in trade?

A. Principally cotton; sometimes of silk. Sometimes there is silk in it. Sometimes the embroidery part is made of silk.

295 Q. Are you sufficiently familiar with the [883] manufacturing processes to say whether this product is made by weaving or braiding?

A. No.

Q. Between what limits of widths is it known to you?

A. From three-eighths to about one-half of an inch—maybe a trifle more.

Q. Mr. Connell, what is feather-edge braid?

A. Feather-edge braid is a different article altogether; it is a little cotton braid with loops on the edges of it.

Q. It is not subject to the testimony you have given on the featherstitched? [884]

A. No, sir.

Q. Is any one of the several names you say have prevailed in trade for this product predominant over the others—or are they indiscriminately used?

A. Indiscriminately used.

Cross-examination by Mr. BAKER:

Q. Mr. Connell, now do I understand the featherstitched braids are generally designated—by what name?

A. Either name, featherstitched braid or seam binding.

Q. That is the general usage in the trade? [885]

A. Yes, sir.

DANIEL WEILLER, called as a witness in behalf of the importers, and being duly sworn, testified as follows:

By Mr. COMSTOCK:

Q. Of what house, Mr. Weiller, are you a member?

A. Weiller & Sons.

296 Q. The line of business of that house is what? [886]

A. Importing notions.

Q. Deal in them also?

A. Deal in them.

Q. Wholesale or retail?

A. Wholesale.

Q. How long have you been a wholesale dealer in notions?

A. Twenty-seven years.

Q. That is always in this country?

A. In this country, with the same house.

Q. Are your dealings restricted to one or a few localities? Or general?

A. General, all over the country. [887]

Q. Do you take a personal part in these transactions yourself?

A. I do.

Q. Are you familiar with the substance, or substances, designated in trade as featherstitch, featherstitching, herringbone, feather-stitched braid, or seam binding?

A. I am.

Q. Do the names I have used apply to one particular or to a great many different braids?

A. One article.

Q. What is that article made of, Mr. Weiller?

A. Principally cotton.

Q. Is it ever made in any instances more largely [888] of any other material than cotton?

A. No.

Q. Is it always wholly cotton or chiefly cotton?

A. Nearly always.

Q. Exceedingly small proportion is made of silk?

A. Yes.

(Counsel for importers states that this case does not contend as to the classification of any others than those wholly or chiefly of cotton.)

297 Q. Mr. Weiller, what is the chief use of this product? [889]

A. For covering the seams of underwear and waists.

Q. Seams of underwear and waists?

A. Yes. It is sewed over the seams.

Q. What other word than covering would equally designate that use?

A. Binding.

Q. That is in accordance with the usage of terms in trade?

A. Yes, sir.

Q. Has there ever been a time in your commercial experience when these different terms enumerated by me did not designate in trade this product? [890]

A. No.

Q. Are you familiar with the method of the manufacture of the product?

A. Yes.

Q. State whether it is made by weaving or braiding—speaking of the different methods of manufacture.

A. It is made both ways. The great bulk are made on the loom, but there are certain braids made on braiding machines.

Q. Has there been, during your familiarity with it, any change in its use or uses? [891]

A. They have always been the same.

Q. Is that article relatively a large or small one with you?

A. It is one of our principal articles.

Cross-examination by Mr. BAKER:

Q. Mr. Weiller, by what name is featherstitched braid usually bought and sold in your experience?

298 A. It is known under two names, featherstitched braid and seam binding. The other names are [892] insignificant and are not in general usage.

Q. Is there any particular difference between a binding that is turned over the edge and one simply sewn over the seam?

A. No difference in the article—turning over is a matter of manipulation—both are bindings in that case.

Q. The use does not determine its name, does it—whether it is a binding or not?

A. It certainly does.

Q. You would not call a binding used—of all widths—to turn over the edge of a fabric—you would not call that a seam binding? [893]

A. No.

Q. What would you call that?

A. Binding.

Q. That is, featherstitched braids are used to sew over and cover seams, as such?

A. Yes.

Q. On which side, the selvage side or the other?

A. Usually on the rough edge; sometimes on the smooth edge, too. Either is to hide something from view. It depends upon the nature of the article of apparel.

Q. It is put on seams where the seam is shown?

A. Sometimes.

Q. Then again on the rough side? [894]

A. Yes. It depends as one or the other may be the outside. It also depends upon the person putting it on; it is used to bind seams.

Q. By what general trade term are such braids known?

A. My experience has been that we ourselves call it more featherstitched braids, but our customers seem to call it more seam binding.

Q. That would be a more popular use?

A. Yes.

299 Q. It is explanatory, whereas the other is the [895] trade designation?

A. I would not say.

Q. When you bill large quantities—did you not say that in your business it is more general to call it featherstitched braid?

A. No, sir.

Q. Now, how do you bill these goods to your wholesale purchasers?

A. Featherstitched braids.

Q. How invoiced as you import them?

(Counsel for importers objects to having his witness answer this question. Objection overruled by referee.) [896]

A. Featherstitched braids.

Redirect examination by Mr. COMSTOCK:

Q. Mr. Weiller, you have been asked how these goods are invoiced to you, and have answered under objection of counsel. From where are they invoiced?

A. From Europe.

Q. Anywhere else?

A. No.

Q. As the word bindings is used in your trade, and was used prior to July, 1897, say whether or not that word, in its commercial acceptance, could [897] be satisfied without including the product you have testified to under it—I mean wholly satisfied?

A. I do not understand what you mean.

Q. Well, the word bindings exists in trade as a trade term?

A. Yes.

Q. And has for many years?

A. Yes.

300 Q. Now, if a merchant were to ask for a list of the things which are bindings, could he make a [898] complete list, adhering to the understanding of trade, without including these featherstitch braids under the list?

A. No.

Recross-examination by Mr. BAKER:

Q. In ordering these goods from abroad by what term are they so ordered?

(Counsel for importers objects to this question as irrelevant and immaterial. Objection overruled by referee.)

A. We usually order them as featherstitched braids. [899]

Redirect by Mr. COMSTOCK:

Q. And your customers in ordering in these goods usually order them as seam bindings?

A. Yes.

HENRY KLEINSCHMIDT, called as a witness in behalf of the importers, being duly sworn, testified as follows:

By Mr. COMSTOCK: [900]

Q. Mr. Kleinschmidt, with what house are you connected?
A. C. M. Vom Baur.
Q. The business of your house is what?
A. Importing.
Q. Of what?
A. Featherstitched braids, laces, veilings, etc.
Q. Your occupation in the house is what? What do you do?
A. Salesman.
301 Q. Sell wholesale or retail? [901]
A. Wholesale.
Q. Only?
A. Only.
Q. How long have you been doing that?
A. Sixteen years.
Q. Sell all over the country or locally?
A. All over the country.
Q. Now, at and before July, 1897, did you know and deal in one or more articles which bore the designations herringbone, featherstitched tape, featherstitched braid, and seam binding?
A. Only one.
Q. Only one article, do you mean? [902]
A. Only one article covering all these.
Q. Do you know how that article was made personally?
Q. You know how it looks?
Q. Had it a braided or woven appearance?
A. Woven.
Q. What was it made out of?
A. Principally cotton.
Q. What was it, and is it, used for?
A. Seam coverings.
Q. Is there any other word than coverings descriptive of that use?
A. Seam bindings.
Q. And has this usage been unchanged during [903] the period you have known it?
Q. Seam bindings, featherstitched braids, herringbone, webbing, etc., has the name been unchanged throughout all that time?
A. Yes; it has been unchanged.
No cross-examination.

302 C. M. VOM BAUR, called as a witness in behalf [904] of the importers, and, being duly sworn, testified as follows:

By Mr. COMSTOCK:

Q. Mr. Vom Baur, are you the gentleman in whose employ the last witness was?
A. I am.

Q. Do you know the articles of merchandise about which he testified?

A. I do.

Q. Do you know the method of its manufacture?

A. Yes.

Q. How is it manufactured? [905]

A. Woven on the loom.

Q. And made complete by such process?

A. Complete.

Cross-examination by Mr. BAKER:

Q. Is any description of these featherstitched braids made on any other weaving appliance?

A. Yes; during my experience I have had one pattern in all the years I have imported them which was braided; one single pattern out of the thousand that have been produced.

Q. It was made on the braiding machine?

A. Yes. They are generally made on the loom. [906]

Q. How do you buy and sell generally in your wholesale trade, under what name?

A. Featherstitched braid.

Q. That is the general name?

A. Yes.

Redirect examination by Mr. COMSTOCK:

Q. What is the characteristic of tapes; what is it that makes it known as a tape?

303 A. A tape has a smooth band without any [907] design, simply smooth woven band.

Q. It is woven?

A. It is woven.

Q. You have been asked by counsel for the Government what these are bought and sold as?

A. As featherstitched braids.

Q. Do you buy braid in this country?

A. In Germany.

Q. Whether or not in your sales of that in this country any other names applies than featherstitched braids?

A. Oh, yes; seam binding; mostly featherstitched braids. [908]

Importers rest.

Government rests.

Testimony closed.

Dated Dec. 31, 1902.

(Endorsed:) U. S. Circuit Court. Filed Jan. 15, 1903. Southern District, New York. John A. Shields, clerk. [909]

304 United States Circuit Court, Southern District of New York.

LEOPOLD BARUCH, PETITIONER,
vs.
UNITED STATES, DEFENDANT. } No. 4419.

PLATT, District Judge:

The articles in dispute (collective Exhibits A, B, and C) are woven on a loom. Tapes and bindings are made that way. Braids are usually made on a machine. The manner of making, therefore, leads us towards tapes and bindings in paragraph 320, but a thing is not necessarily one or another for tariff purposes because it is made in a certain way. When we come to look at the uses to which they are put we find that they have a dual function. They serve to cover and unite the raw edges, and in that sense are, perhaps, tapes or bindings, but they also look pretty, and in that sense are ejusdem generis with "embroideries and all trimmings, including braids," in paragraph 339. Did or did not Congress have these things in mind when the tariff act of 1897 was passed?

To answer that question properly it seems right to look at the Dieckerhoff case. In that case the Government tried to classify similar articles as cotton trimmings at 60%, but the importers insisted upon their classification as cotton braids at 35%. This was established by proving the commercial designation. The manner of making and use was substantially the same as in the present case. In the 54 Fed. Rep., 161 (1893), Judge Coxe sustained the importers' contention. The Government acquiesced, and the ruling of that case prevailed until the passage of the act of 1897.

305 It is unthinkable that the parties who had succeeded in getting a low rate of duty, based upon commercial usage, would have taken any steps to obstruct the generality, uniformity, and definiteness of such usage whilst they were benefiting thereby. Prior to the 1897 tariff act articles like those now at issue had many subsidiary names, just as these articles have, but the ruling was that the goods came under the general trade designation of "featherstitch braids" and must therefore pay duty as braids. The importers prepared for themselves the bed in which they rest, and they ought to be the last persons to complain of irregularities while occupying it.

I can not avoid the conclusion that when Congress included braids among trimmings it had the Dieckerhoff case in mind. The decision of the Circuit Court of Appeals in Heller vs. U. S., 106 Fed. Rep., 73, leads me to think that the same opinion ruled there in the mind of the dissenting judge.

The board found that these goods were known generally in the trade as featherstitch braids prior to 1897. The further testimony taken in court does not tend to weaken that conclusion; in truth it serves to strengthen it. At the hearing the importers acquiesced in the board's decision in so far as it related to collective Exhibit C.

and were more or less faint hearted in their attack upon collective Exhibit B. If they can divest themselves for a moment of the influence which self interest furnishes, they will see that the logic of the situation sweeps collective Exhibit A into the same net.

The decision of the board is affirmed.

(Endorsed: A. H. Washburn, Esq., for petitioner; J. Osgood Nichols, Esq., for United States. No. 4419. United States Circuit Court, Southern District of New York. Leopold Baruch, petitioner, vs. United States, defendant. Opinion, Platt, D. J. U. S. Circuit Court, Southern District of N. Y. Filed Nov. 23, 1907. John A. Shields, clerk.

306 At a stated term of the Circuit Court of United States of America for the Southern District of New York, held at the United States Circuit Court rooms in the Post Office Building in the city of New York, on the 29th day of November, in the year of our Lord one thousand nine hundred and seven.

Present: The Hon. James P. Platt, judge.

LEOPOLD BARUCH
vs.
THE UNITED STATES. } "A" suit No. 4419.

The above cause came on for hearing and determination before this court on the application of Leopold Baruch, importer, for a review of the questions of law and fact involved in the decisions of the Board of United State General Appraisers herein, and on the return of the Board of General Appraisers of the record and evidence taken by them, with their certified statement of the facts involved therein, together with their decisions thereon.

Now, after hearing J. Osgood Nichols, assistant United States Attorney, on behalf of the collector for affirmance, and Albert H. Washburn, Esq., of counsel for the said importer, for reversal, on motion of Henry L. Stimson, United States attorney:

It is ordered, adjudged, and decreed that there was no error in said proceedings before said Board of General Appraisers, and that
307 their decisions herein be and they are hereby in all things affirmed.

Assented to as to form.

JAMES P. PLATT, *U. S. Judge.*

COMSTOCK & WASHBURN,
Attorneys for Importer.

(Endorsed:) A 4419. U. S. Circuit Court, Southern District of New York. Leopold Baruch vs. The United States. Judgment of affirmance. Henry L. Stimson, U. S. Attorney. Due service of a copy of the within judgment is hereby admitted. To U. S. Circuit Court, Southern District of N. Y. Filed Dec. 6th, 1907. John A. Shields, clerk.

United States Circuit Court of Appeals for the Second Circuit.

LEOPOLD BARUCH, APPELLANT, *vs.* THE UNITED STATES OF AMERICA, APPELLEE.	Suit No. A 4419.

The above-named appellant, by his attorneys, hereby applies for the allowance of an appeal to the United States Circuit Court of Appeals for the Second Circuit from the decision and judgment of the United States Circuit Court rendered herein on the 23d day
308 of November, 1907, and from the order or judgment thereon entered on the 29th day of November, 1907.

Dated New York, December 28th, 1907.

COMSTOCK & WASHBURN,
Attorneys for Appellants.

The foregoing application is granted and the appeal is allowed.
Dated New York, December 28th, 1907.

E. H. LACOMBE,
Judge of the U. S. Circuit Court of Appeals for the Second Circuit.

(Endorsed:) A 4419. United States Circuit Court of Appeals for the Second Circuit. Leopold Baruch, appellant, vs. The United States, appellee. Application for an allowance of appeal. Comstock & Washburn, attorneys for appellant, 56 Pine Street, New York City. A copy of the within paper has been this day received at this office, Dec. 31, 1907. Henry L. Stimson, U. S. attorney. U. S. Circuit Court, Southern District of N. Y. Filed Dec. 31, 1907. John A. Shields, clerk.

309 United States Circuit Court of Appeals for the Second Circuit.

LEOPOLD BARUCH, APPELLANT, *vs.* THE UNITED STATES OF AMERICA, appellee.	Suit No. A 4419.

ASSIGNMENT OF ERRORS.

The above named appellant hereby assigns error to the decision and judgment of the Circuit Court of the United States for the Southern District of New York herein, in the following particulars:

First. In that the said court ordered, adjudged, and decreed that the decision of the Board of United States General Appraisers herein should be affirmed.

Second. In that the said court ordered, adjudged, and decreed that the merchandise in question was dutiable at 60 per cent ad val. under par. 339, tariff act of July 24, 1907 (30 Stats. at L., 151).

Third. In that the said court did not find that the said merchandise was bindings, tapes, or bandings.

Fourth. In that the said court did not find as a matter of law that paragraph 320 of the said act was the most specific one for said merchandise.

Fifth. In that the said court did not reverse the decision of the Board of United States General Appraisers herein.

310 Sixth. In that the said court did not hold said merchandise to be properly dutiable at only 45 per cent ad valorem under par. 320 of the act aforesaid.

Dated New York, December 28, 1907.

COMSTOCK & WASHBURN,
Attorneys for Appellants,
12 Broadway, N. Y. City.

(Endorsed:) No. A 4419. United States Circuit Court of Appeals for the Second Circuit. Leopold Baruch, appellant, vs. The United States of America, appellee. Assignment of errors. Comstock & Washburn, attorneys for appellant, 12 Broadway, New York City. U. S. Circuit Court, Southern District of N. Y. Filed Dec. 28, 1907. John A. Shields, clerk.

Know all men by these presents, that I, Philip Comstock, am held and firmly bound unto the United States of America, in the sum of one hundred dollars, to be paid to the United States of America; for the payment of which well and truly to be made, I bind myself, my heirs, executors and administrators, jointly and severally by these presents.

Sealed with my seal and dated the 28th day of December, in the year of our Lord one thousand nine hundred and seven.

Whereas Leopold Baruch has applied to the United States Circuit Court of Appeals for the Second Circuit, for a review of the decision of the United States Circuit Court for the Southern District of New York as to the questions of law and fact involved in certain decisions of the Board of United States General Appraisers.

Now, therefore, the condition of this obligation is such that if the above-named Leopold Baruch shall prosecute said proceedings

311 with effect and pay all damages and costs which shall be awarded against him therein, if he shall fail to make said proceeding good, then this obligation shall be void; otherwise the same shall be, and remain in full force and effect.

PHILIP COMSTOCK. [SEAL.]

Sealed and delivered and taken and acknowledged, this 28th day of December, 1907, before me.

[SEAL.] HENRY J. RODE,
Notary Public, Kings County.

Certificate filed in N. Y. County.

UNITED STATES OF AMERICA,
Southern District of New York, ss.:

Philip Comstock, being duly sworn, deposes and says that he does business in the Southern District of New York, in the city of New York, and that he is worth the sum of two hundred dollars over and above his just debts and liabilities.

PHILIP COMSTOCK.

Sworn to this 28th day of December, 1907, before me.
[SEAL.] HENRY J. RODE,
Notary Public, Kings County.

Certificate filed in N. Y. County.

This bond approved as to form and amount and sufficiency of surety.

E. H. LACOMBE,
U. S. Circuit Judge.

Dated New York, December 28th, 1907.

(Endorsed:) United States Circuit Court, Southern District of New York. Leopold Baruch, appellant, vs. The United States, appellee. Bond for costs on application for review. Com-
312 stock & Washburn, attorneys for appellant, 56 Pine Street, New York City. U. S. Circuit Court, Southern District of N. Y. Filed Dec. 28, 1907. John A. Shields, clerk.

UNITED STATES OF AMERICA, *ss:*

To the United States of America:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Second Circuit, at the city of New York, on the 25th day of January, 1908, pursuant to an appeal on the part of Leopold Baruch, filed in the clerk's office of the Circuit Court of the United States for the Southern District of New York, in a certain suit or proceeding entitled Leopold Baruch, appellant, vs. The United States of America, appellee, suit No. A. 4419, to show cause, if any there be, why the decision of the U. S. Circuit Court, in the said appeal mentioned, should not be reversed, modified or corrected, and speedy justice should not be done in that behalf.

Given under my hand at the city of New York, in the Southern District of New York, on the 28th day of December, 1907.

E. H. LACOMBE,
Judge of the Circuit Court of Appeals for the Second Circuit.

COMSTOCK & WASHBURN,
Attorneys for Appellants.

(Endorsed:) No. A. 4419. United States Circuit Court of Appeals for the Second Circuit. Leopold Baruch, appellant, vs. The

United States, appellee. Citation. Comstock & Washburn, attorneys for appellant, 56 Pine Street, New York City. A copy of the within paper has been this day received at this office, Dec. 31, 1907. Henry L. Stimson, U. S. attorney. U. S. Circuit Court, Southern District of N. Y. Filed Dec. 31, 1907. John A. Shields, clerk.

313 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Shields, clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit, do hereby certify that the foregoing pages, numbered from one to 315 inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the cause entitled Leopold Baruch, appellant, against The United States, appellee, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the Southern District of New York, in the Second Circuit, this 12th day of October, in the year of our Lord one thousand nine hundred and eight, and of the Independence of the said United States the one hundred and thirty-third.

[SEAL.] JOHN A. SHIELDS, *Clerk*.

314 United States Circuit Court of Appeals for the Second Circuit.

No. 245. October Term, 1908.

Argued April 19, 1909. Decided May 25, 1909.

LEOPOLD BARUCH, APPELLANT,
vs.
THE UNITED STATES, APPELLEE. } (4419)

Appeal from the Circuit Court of the United States for the Southern District of New York.

Before Lacombe, Ward, and Noyes, circuit judges.

This is an appeal taken by an importer from a decision of the Circuit Court, Southern District of New York, affirming a decision of the Board of General Appraisers which affirmed a decision of the collector that certain imported merchandise consisting of various loom woven fabrics were dutiable as braids under paragraph 339 of the tariff act of 1897.

The merchandise is of three classes shown in Exhibits A, B, and C. The importer concedes that the broad articles shown in Exhibit C were properly assessed under paragraph 339, but contends that the narrow articles illustrated in Exhibits A and B should have been assessed as "bindings," under paragraph 320 of said tariff act.

315 The two paragraphs in question follow and as the development of the legislation is of importance they are shown in

parallel columns with the corresponding paragraphs of the tariff acts of 1890 and 1894:

Act of 1890.	Act of 1894.	Act of 1897.
354. Cotton cords, braids, boot, shoe, and corset lacings, thirty-five cents per pound; cotton gimps, galloons, webbing, goring, suspenders, and braces, and of the foregoing which are elastic or non-elastic, forty per centum ad valorem; Provided, That none of the articles included in this paragraph shall pay a less rate of duty than forty per centum ad valorem.	263. Cords, braids, boot, shoe and corset lacings, tapes, gimps, galloons, webbing, goring, suspenders and braces, woven, braided, or twisted lamp or candle wicking, lining for bicycle tires, spindle binding, any of the above made of cotton or other vegetable fiber and whether composed in part of India rubber or otherwise, forty-five per centum ad valorem.	320. Bandings, beltings, bindings, bone casings, cords, garters, lining for bicycle tires, ribbons, suspenders and braces, tapes, tubing, and webs or webbing, any of the foregoing articles made of cotton or other vegetable fiber, whether composed of in part of india-rubber or otherwise, and not embroidered by hand or machinery, forty-five per centum ad valorem; spindle banding, woven, braided or twisted lamp, stove, or candle wicking made of cotton or other vegetable fiber, ten cents per pound and fifteen per centum ad valorem; loom harness or healds made of cotton or other vegetable fiber, or of which cotton or other vegetable fiber is the component material of chief value, fifty cents per pound and twenty-five per centum ad valorem; boot, shoe, and corset lacing made of cotton or other vegetable fiber, twenty-five cents per pound and fifteen per centum ad valorem; labels, for garments or other articles composed of cotton or other vegetable fiber, fifty cents per pound and thirty per centum ad valorem.
316 573. Laces, edges, embroideries, insertings, neck rufflings, ruchings, trimmings, tuckings, lace window curtains, and other similar tamboured articles, and articles embroidered by hand or machinery, embroidered and hemstitched handkerchiefs, and articles made wholly or in part of lace rufflings, tuckings, or ruchings, all of the above-named articles, composed of flax,	276. Laces, edging, nettings and veilings, embroideries, insertings, neck rufflings, ruchings, trimmings, tuckings, lace window curtains, tamboured articles, and articles embroidered by hand or machinery, embroidered handkerchiefs, and articles made wholly or in part of lace, rufflings, tuckings, or ruchings, all of the above-named articles, composed of flax, jute, cotton, or other	339. Laces, lace window curtains, tidies, pillow shams, bed sets, insertings, flouncings, and other lace articles; handkerchiefs, napkins, wearing apparel, and other articles, made wholly or in part of lace, or in imitation of lace; nets or nettings, veils and veilings, etamines, vitrages, neck rufflings, ruchings, tuckings, flutings, and quiltings; embroideries and all trimmings, in-

jute, cotton, or other vegetable fiber, or of which these substances or either of them or a mixture of any of them is the component material of chief value, not specially provided for in this act, sixty per centum ad valorem; Provided, that articles of wearing apparel, and textile fabrics, when embroidered by hand or machinery, and whether specially or otherwise provided for in this act, shall not pay a less rate of duty than that fixed by the respective paragraphs and schedules of this act upon embroideries of the materials of which they are respectively composed.

vegetable fiber, or of which these substances or either of them, or a mixture of any of them is the component material of chief value, not specially provided for in this act, fifty per centum ad valorem.

cluding braids, edgings, insertings, flouncings, galloons, gorings and bands; wearing apparel, handkerchiefs, and other articles or fabrics embroidered in any manner by hand or machinery, whether with a letter monogram or otherwise; tamboured or appliqued articles, fabrics or wearing apparel; hemstitched or tucked flouncings or skirtings, and articles made wholly or in part of rufflings, tuckings or ruchings, all of the foregoing, composed wholly or in chief value of flax, cotton, or other vegetable fiber and not elsewhere specially provided for in this act, whether composed in part of india-rubber or otherwise, sixty per centum ad valorem; Provided, That no wearing apparel or other article or textile fabric, when embroidered by hand or machinery, shall pay duty at a less rate than that imposed in any schedule of this act upon any embroideries of the materials of which embroidery is composed.

Bindings appeared for the first time in the act of 1897 when they were inserted in paragraph 320. Braids at the same time were inserted in paragraph 339. In the provisions of the acts of 1890 and 1894 the word "braid" appeared without words of limitation. In paragraph 339 it is followed by the restriction "not elsewhere specially provided for in this act."

The articles in the paragraphs at the head of the parallel
317 column par. 354 of the act of 1890; par. 263 of the act of 1894; and par. 320 of the act of 1897) are primarily articles of utility not inappropriately designated in the brief of the importer as "notions." The other paragraphs embrace articles which are primarily for the purpose of ornamentation.

NOYES, Circuit Judge (after making the foregoing statement).

The merchandise in question consists of narrow woven strips bearing "featherstitch" or "herringbone" ornamentation. Their practical use is to cover seams. They are inexpensive and are largely used in making infants' clothing and underwear. The featherstitch orna-

mentation improves the appearance of the garment and is added for that purpose. But the primary purpose of the article is one of utility. This article has borne various names such as "seam binding," "featherstitch binding," "featherstitch tape," etc., but the name by which it has usually been called is "featherstitch braid." Indeed, while the article is not braided but woven, we should have little difficulty in adopting the conclusion of the Circuit Court and of the Board of Appraisers that prior to 1897 it was generally commercially designated as "featherstitch braid."

But this is not a case in which the finding of a commercial designation carries us far. The question is not whether the articles are braids, but whether they are braids not elsewhere specially provided for in the act. Manifestly commercial designation can have no bearing upon the latter inquiry. It cannot be said that the phrase "braids not otherwise specially provided for" had any commercial meaning—different from the common understanding—including this merchandise. The articles may be called "featherstitched braids," but if some braids are bindings it is not inconsistent with the commercial designation to assess them under the binding paragraph. Had this question arisen under the tariff acts of 1890 or 1894 the situation would be entirely different. As we have seen the word "braid" was used in those acts without words of limitation or qualification. If in a case under either of those acts it has been shown that an article was commercially known as a braid, it would have necessarily brought it within the statute. But an article is not necessarily brought within paragraph 339 by showing that it is a braid.

318 It may be a braid without question—may have been made upon a braiding machine, but if it is more specially provided for elsewhere it is not included. Accepting the commercial designation of these articles as featherstitched braids, we only reach the conclusion that they should be classified under paragraph 339 if they are not more specifically provided for elsewhere.

Now, the following definition of the word "binding" appears in the Standard Dictionary:

"A braid or strip folded and sewed on the edge of any fabric, or sewed over the place where two parts are joined, so as to protect and secure the parts covered by it."

It thus appears that a binding may be a braid used or adapted to be used for a particular useful purpose. Many kinds of braid are not adapted to this use. They are employed for ornamental purposes solely. Braids of this character would be classified under paragraph 339. And, as we have seen, this classification would be especially appropriate as that paragraph and those corresponding to it in the earlier acts have always applied particularly to articles of ornamentation. But these featherstitch braids being used for the purpose of binding seams are in our opinion the kind of braids properly called bindings. And we think that it may fairly be assumed that when Congress inserted the word "bindings" in the

"notions" paragraph and transferred the word "braid" to the "trimmings" paragraph with words of qualification, it intended to embrace in the latter paragraph only such braids as were not bindings.

If the articles are bindings as well as braids the provision in the "notions" paragraph is the more specific. Bindings are embraced without words of restriction or qualification. These articles as bindings are necessarily included and they are specially provided for elsewhere in paragraph 339.

This discussion of the case upon principle leads us to the conclusion that the merchandise should have been assessed for duty as bindings under paragraph 320. And we reach no different result from an examination of other cases, although the question of the classification of this merchandise has been before the courts several times and conflicting decisions have been rendered.

319 In the case of In re Dieckerhoff, 54 Fed. 161, it was held that these articles were dutiable as cotton braids under the section of the act of 1890 first quoted and not as cotton trimmings under the second section quoted. This decision, however, has no special bearing upon the question now under consideration because, as we have seen, bindings were not provided for in the act of 1890. Featherstitch braids may well not be trimmings within the ornamental article paragraph of the earlier act and yet be bindings within the useful article paragraph of the act of 1897.

The Government, however, insists that in view of the Dieckerhoff decision it must be presumed that when Congress used the word "braids" in the act of 1897, it intended that it should apply to featherstitch braids. As just pointed out, however, all that that case held was that the articles were braids and not trimmings. It did not hold that they were not bindings. And Congress used the word "braid" only with words of qualification. We see no force in the contention.

Aside from the Dieckerhoff decision under the act of 1890 the question here presented has been decided both ways by the Circuit Court. In Steinhart v. United States, 120 Fed. 442, it was held that the articles if braids were bindings also and therefore dutiable under paragraph 320. This decision was followed in The Hague case which does not appear in the Federal Reporter. In the case of Von Baur v. United States, 141 Fed. 439, the question was again presented and decided the other way. The opinion of the board holding that the articles were braids under paragraph 339 was affirmed without opinion by the Circuit Court.

We find the reasoning in the Steinhart decision persuasive and, for reasons already stated, fail to find that the additional evidence requires any different conclusion.

The decision of the Circuit Court is reversed.

ALBERT H. WASHBURN, for the appellant.

J. OSGOOD NICHOLS, assistant United States attorney, for the appellee.

320 At a stated term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the court rooms in the Post Office Building in the city of New York, on the 4th day of June one thousand nine hundred and nine.

Present: Hon. E. Henry Lacombe, Hon. Henry G. Ward, Hon. Walter C. Noyes, Circuit Judges.

LEOPOLD BARUCH, APPELLANT,
vs.
UNITED STATES, APPELLEE. } (4419)

Appeal from the Circuit Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the Circuit Court of the United States for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the decree of said Circuit Court be and it hereby is reversed.

E. H. L. It is further ordered that a mandate issue to the said Circuit Court in accordance with this decree.

321 (Endorsed:) United States Circuit Court of Appeals, Second Circuit. Leopold Baruch vs. U. S. Order for mandate. United States Circuit Court of Appeals, Second Circuit. Filed Jun' 4, 1909. William Parkin, clerk.

322 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, William Parkin, clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 321, inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the case of Leopold Baruch against United States, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the Southern District of New York, in the Second Circuit, this 17th day of January, in the year of our Lord one thousand nine hundred and ten and of the Independence of the said United States the one hundred and thirty-fourth.

[SEAL.] WM. PARKIN, *Clerk.*

323 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, To the Honorable the Judges of the United States Circuit Court of Appeals for the Second Circuit, greeting:

Being informed that there is now pending before you a suit in which Leopold Baruch is appellant and The United States is appellee, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the Circuit Court of the United States for the Southern District of New York, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United
324 States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the first day of February, in the year of our Lord one thousand nine hundred and ten.

[SEAL.]

JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States.

325 (Indorsed:) File No. 21,975. Supreme Court of the United States. No. 749. October term, 1909. The United States *vs.* Leopold Baruch. Writ of Certiorari. United States Circuit Court of Appeals. Second Circuit. Filed Feb. 4, 1910. William Parkin, clerk.

326 Supreme Court of the United States. October term, 1909.

THE UNITED STATES, PETITIONER,
vs.
LEOPOLD BARUCH. } No. 749.

Stipulation as to return.

It is hereby stipulated by counsel for the parties to the above entitled cause that the certified copy of the transcript of the record therein now on file in the office of the clerk shall be taken as the return of the clerk of the Circuit Court of Appeals for the Second Circuit to the writ of certiorari issued herein.

LLOYD W. BOWERS,
Solicitor General.

ALBERT H. WASHBURN,
Counsel for Respondent.

FEBRUARY 2, 1910.

(Endorsed): United States vs. Baruch. Stipulation. United States Circuit Court of Appeals, Second Circuit. Filed Feb. 4, 1910. William Parkin, clerk.

327 *To the honorable the judges of the Supreme Court of the United States. Greeting:*

Whereas the record and all proceedings whereof mention is within made having lately been certified and filed in the office of the clerk of the Supreme Court of the United States, a copy of the stipulation of counsel is hereto annexed and certified as a return to the writ of certiorari issued herein.

Dated New York, February 4th, 1910.

[SEAL.]

WM. PARKIN,
Clerk of the United States Circuit Court of Appeals for the Second Circuit.

328 (Indorsed:) United States Circuit Court of Appeals, Second Circuit. 749, 21975. United States, petitioner v. Leopold Baruch. Return to certiorari. Office of the clerk, Supreme Court U. S. Received February 7, 1910.

329 (Indorsement on cover:) File No. 21975. Supreme Court U. S. October term, 1909. Term No., 749. The United States petitioner, vs. Leopold Baruch. Writ of certiorari and return. Filed February 7, 1910.

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In the Supreme Court of the United States.

OCTOBER TERM, 1910.

THE UNITED STATES, PETITIONER,
v.
LEOPOLD BARUCH.
No. 408.

MOTION TO ADVANCE.

In behalf of the United States, the Attorney General moves the court to advance the above-entitled cause and to set it for hearing on a day during the present term.

This case presents the question whether articles commercially known as "featherstitch braids" are subject to duty at the rate of 60 per cent ad valorem, under the provision in paragraph 339 of the tariff act of 1897, for "braids," as classified and assessed for duty by the collector of customs and held by the Board of General Appraisers and by the Circuit Court, or at 45 per cent ad valorem, under the provision for "bindings" in paragraph 320 of said act, as claimed in the importer's protest and held by the Circuit Court of Appeals.

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The reasons for this motion are as follows:

1. Much litigation is directly dependent upon the outcome of this case. On June 26, 1909, 3,351 protests were held in the suspended files of the Board of General Appraisers, awaiting a determination of this issue. They have been added to by protests against the similar classification of subsequent importations. Protests in like issues have also accumulated, and there are about 125 appeals on similar or related merchandise pending in court. Nothing will be done in these cases until the final action of this court in the case at bar

2. This case involves a fundamental principle of customs law—the application of the rule of commercial designation, and to what extent, if any, an enumeration according to commercial usage prevails over an enumeration according to common meaning. A large proportion of the cases that come before the Board of General Appraisers, and, on appeal, before the Court of Customs Appeals, involve questions of commercial designation, and of these many require application of the principle involved in this case.

Notice of this motion has been served upon counsel for the respondent.

GEORGE W. WICKERSHAM,
Attorney General.

DECEMBER, 1910.

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In the Supreme Court of the United States.

OCTOBER TERM, 1909.

THE UNITED STATES, PETITIONER,
v.
LEOPOLD BARUCH.
} No. ——.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, AND BRIEF THEREON.

The Solicitor-General, on behalf of the petitioner, respectfully prays for a writ of certiorari to review a decree of the United States Circuit Court of Appeals for the Second Circuit, which reversed the judgment of the Circuit Court affirming the decision of the Board of General Appraisers, and adjudged that articles commercially known as "featherstitch braids" are not subject to duty as braids at the rate of 60 per cent ad valorem under the specific provision therefor in paragraph 339 of the tariff act of 1897, but are dutiable as bindings at the rate of 45 per cent ad valorem under paragraph 320 of said act.

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BRIEF IN SUPPORT OF THE PETITION.

STATEMENT.

The articles are braids, loom woven, of white or colored threads throughout, or of mixed white and variously colored threads, of cotton or other vegetable fiber, and ornamented with raised figures in various designs, some of which have plain and others scalloped or looped edges.

They were invoiced as "Cotton featherstitch braids" and returned by the appraiser as "Cotton braids, sixty per cent."

The tariff provisions mentioned are as follows:

Paragraph 339:

> Laces, lace window curtains, tidies, pillow shams, bed sets, insertings, flouncings, and other lace articles; handkerchiefs, napkins, wearing apparel, and other articles, made wholly or in part of lace, or in imitation of lace; nets or nettings, veils and veilings, etamines, vitrages, neck rufflings, ruchings, tuckings, flutings, and quillings; embroideries and all trimmings, including braids, edgings, insertings, flouncings, galloons, gorings, and bands; wearing apparel, handkerchiefs, and other articles or fabrics embroidered in any manner by hand or machinery, whether with a letter, monogram, or otherwise; tamboured or appliquéed articles, fabrics or wearing apparel; hemstitched or tucked flouncings or skirtings, and articles made wholly or in part of rufflings, tuckings, or ruchings; all of the foregoing, composed wholly

or in chief value of flax, cotton, or other vegetable fiber, and not elsewhere specially provided for in this act, whether composed in part of india rubber or otherwise, sixty per centum ad valorem: *Provided*, That no wearing apparel or other article or textile fabric, when embroidered by hand or machinery, shall pay duty at a less rate than that imposed in any schedule of this act upon any embroideries of the materials of which such embroidery is composed.

Paragraph 320:

Bandings, beltings, bindings, bone casings, cords, garters, linings for bicycle tires, ribbons, suspenders and braces, tapes, tubing, and webs or webbing, any of the foregoing articles made of cotton or other vegetable fiber, whether composed in part of india rubber or otherwise, and not embroidered by hand or machinery, forty-five per centum ad valorem; spindle banding, woven, braided or twisted lamp, stove, or candle wicking made of cotton or other vegetable fiber, ten cents per pound and fifteen per centum ad valorem; loom harness or healds made of cotton or other vegetable fiber, or of which cotton or other vegetable fiber is the component material of chief value, fifty cents per pound and twenty-five per centum ad valorem; boot, shoe, and corset lacings made of cotton or other vegetable fiber, twenty-five cents per pound and fifteen per centum ad valorem; labels, for garments or other articles, composed of cotton or other vegetable fiber, fifty cents per pound and thirty per centum ad valorem.

The importers protested against the assessment of duties at the rate of 60 per cent ad valorem under paragraph 339, claiming, among other provisions, paragraph 320 as the proper classification (R., 11, 12). The Board of General Appraisers overruled the protest, following *Vom Baur* v. *United States* (141 Fed., 439).

The Circuit Court affirmed the board's decision.

The Circuit Court of Appeals reversed the judgment of the Circuit Court and held that although the articles are commercially designated as "featherstitch braids," they are nevertheless dutiable as "bindings," because they are braids "otherwise specially provided for" in paragraph 320.

Petitioner prays for a writ of certiorari in order that the judgment entered by said Circuit Court of Appeals may be reviewed by this court, and in support thereof assigns the following grounds:

I. A writ of certiorari should be issued, if for no other reason, because the decisions of courts in the same and in different circuits are in conflict.

II. This issue is of great importance (1) because of the amount of revenue involved and (2) because a principle of classification which this court has given first rank is in question.

III. The articles are not bindings as well as braids, in trade, ordinary, or tariff meaning, and, therefore, are dutiable at 60 per cent ad valorem under paragraph 339, as held by the Board of General Appraisers and the Circuit Court, and not at 45 per cent ad valorem under paragraph 320, as held by the Circuit Court of Appeals.

I.

A writ of certiorari should be issued, if for no other reason, because decisions of courts in the same and in different circuits are in conflict.

In the *Dieckerhoff case* (54 Fed., 161) the Circuit Court for the Southern District of New York affirmed the decision of the Board of General Appraisers that featherstitch braids woven on a loom, as in the present case, and commercially so designated, were dutiable as cotton braids under paragraph 354 of the tariff act of 1890, which corresponded to paragraph 320 of the tariff act of 1897, with, however, a provision for "braids" instead of for "bindings," and were not dutiable as cotton trimmings under paragraph 373 of said act, which corresponded to paragraph 339 of the tariff act of 1897, but did not, like the latter, contain a specific provision for braids.

The Treasury Department, on advice of the Attorney-General, acquiesced in this decision, and extended it to contested importations of featherstitch braids which had been classified as trimmings under the tariff act of 1883.

In *Hiller* v. *United States* (106 Fed., 73) the Circuit Court of Appeals for the Second Circuit affirmed the judgment of the Circuit Court, which had affirmed the decision of the Board of General Appraisers that certain braids intended to be manufactured into shoe laces, though not trimmings, were dutiable as braids at 60 per cent ad valorem under paragraph 339 of the tariff act of 1897, it being held that the word "including" before "braids," etc., in that paragraph was

used not by way of specification, but by way of addition.

A petition for a writ of certiorari was denied by this court. (180 U. S., 639.)

In *Steinhardt* v. *United States* (121 Fed., 442) the Circuit Court for the Southern District of New York reversed the decision of the Board of General Appraisers, and held that narrow woven tape of cotton, used largely for covering the seams of underwear and waists, was dutiable as a binding or tape at 45 per cent ad valorem under paragraph 320 of the tariff act of 1897, and not as a braid dutiable at 60 per cent ad valorem under paragraph 339.

No witnesses were called for the Government, and commercial designation was not established.

The court reversed the board's decision on the strength of the definition in the Standard Dictionary that a braid is "a narrow, flat tape or woven strip for binding the edges of fabrics, or for ornamenting them."

In *Hague* v. *United States* (T. D. 25466—not reported in the Federal Reporter) the Steinhardt case was followed.

In *Vom Baur* v. *United States* (141 Fed., 439) the Circuit Court for the Southern District of New York affirmed the decision of the Board of General Appraisers that featherstitch braids produced by a process of weaving and not of braiding are commercially known as "braids," and are dutiable as such under paragraph 339, tariff act of 1897, and not under paragraph 320 relating to bindings, tapes, etc.

An appeal taken by the importer to the Circuit Court of Appeals was dismissed without prejudice. (T. D. 27397, suit No. 3640.)

In *Marshall Field & Co.* v. *United States* (T. D. 29548, suit 2015) the Circuit Court for the Northern District of Illinois affirmed the decision of the Board of General Appraisers that featherstitch braids are commercially known as braids, and are dutiable at 60 per cent ad valorem under paragraph 339 of the tariff act of 1897.

An appeal to the Circuit Court of Appeals was dismissed at the request of the importer after the decision of the Circuit Court of Appeals in the present case.

It therefore appears that five other cases involving the classification of featherstitch braids have been tried. The first case (Dieckerhoff) was decided against the Government, because the merchandise, although not made on braiding machines, was held to be commercially known as featherstitch braids and not trimmings, and paragraph 354 of the tariff act of 1890 expressly included "braids," while paragraph 373, under which the Government insisted it should be classified, did not. The two cases in which the Government established commercial designation for the merchandise as featherstitch braids were decided in its favor. The two adverse decisions (Steinhardt and Hague) rested on the definition of a dictionary and were followed in the present case, notwithstanding proof of commercial designation, which was wanting in the cases followed.

The importer abandoned its appeal to the Circuit Court of Appeals, Seventh Circuit, in *Marshall Field & Co.* v. *United States, supra*, after the decision of the Circuit Court of Appeals, Second Circuit, was rendered in the case at bar. By that action the decision in the Seventh Circuit is entitled to the same weight as the decision in the Second Circuit; and being in conflict with each other and with prior cases on the same subject, a writ of certiorari is sought to have the decisions reviewed by this court and the dutiable classification of all such imported merchandise finally determined.

Recent cases in which writs of certiorari have been issued to review conflicting decisions are as follows:

Chew Hing Lung v. *Wise* (176 U. S., 156).

Frankenburg Co. v. *United States* (206 U. S., 224).

Komada v. *United States*, decided on January 3, 1910.

In *Chew Hing Lung* v. *Wise* this court said (p. 157):

> Upon application by the importers this court granted a writ of certiorari, it being alleged that there were inconsistent decisions in the circuit courts of appeals on this question.

In *Frankenburg Co.* v. *United States* the Circuit Court of Appeals for the Second Circuit referred to a decision of the Circuit Court of Appeals in the Seventh Circuit and adhered to a former ruling,

> * * * leaving the question *to the Supreme Court to secure uniformity by determining which of the conflicting constructions of the paragraph is the correct one.*

II.

This issue is of great importance (1) because of the amount of revenue involved, and (2) because a principle of classification which this court has given first rank is in question.

(1) On June 26, 1909, 3,351 protests involving duties calculated at $104,110.50 were held in the suspended files of the Board of General Appraisers awaiting a determination of this issue.

(2) The rule of classification of imported merchandise by commercial designation is applicable and should have been adhered to by the Circuit Court of Appeals.

This court has held that commercial designation is of first importance and must govern classification, unless it clearly appears that Congress intended some other meaning. (*Robertson* v. *Salomon*, 130 U. S., 412, 415; *Curtis* v. *Martin*, 3 How., 106, 109; *Arthur* v. *Morrison*, 96 U. S., 108, 111; *Arthur* v. *Butterfield*, 125 U. S., 70, 75; *Hedden* v. *Richard*, 149 U. S., 346, 349; *Roosevelt* v. *Maxwell*, 3 Blatchf., 391, Fed. Cas., 12034; *Greenleaf* v. *Goodrich*, 101 U. S., 278, 282; *American Net and Twine Co.* v. *Worthington*, 141 U. S., 468, 471; *Cadwalader* v. *Zeh*, 151 U. S., 171, 176; *Chew Hing Lung* v. *Wise*, 176 U. S., 156, 161; *Goat and Sheepskin Import Co.* v. *U. S.*, 206 U. S., 194, 203.)

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III.

The articles are not bindings as well as braids, in trade, ordinary or tariff meaning, and, therefore, are dutiable at 60 per cent ad valorem under paragraph 339 as held by the Board of General Appraisers and the Circuit Court, and not at 45 per cent ad valorem under paragraph 320 as held by the Circuit Court of Appeals.

There can be no doubt that commercial designation is established for these articles as featherstitch braids. The testimony clearly shows it (R., 33, 51, 54, 99, 100, 102, 111, 112, 117, 118, 120, 121, 123, 124, 126, 130, 134, 136, 137); the Board of General Appraisers and the Circuit Court so found and held, and the Circuit Court of Appeals admits it, but nevertheless classifies them as bindings.

The evidence in the Vom Baur case (R., 152–283) and Steinhardt case (R., 284–303) is part of the record here. No additional evidence was taken by the board, which quoted its full opinion in the Vom Baur case, wherein the testimony was reviewed and the board said (R., 18):

> The goods are labeled "featherstitch braids," as shown by the several exhibits introduced in evidence. Seven of the witnesses produced samples of importations made by the firms with which they were connected, and with one exception they were labeled "featherstitch braids." We think the testimony of the witnesses, when carefully examined, shows that the articles are commercially known as "featherstitch braids" and that they have been so known since 1890.

Voluminous testimony was taken in the Circuit Court, which said in part (R., 305):

> The board found that these goods were known generally in the trade as featherstitch braids prior to 1897. The further testimony taken in court does not tend to weaken that conclusion; in truth, it serves to strengthen it. At the hearing the importers acquiesced in the board's decision in so far as it related to Collective Exhibit C, and were more or less faint-hearted in their attack upon Collective Exhibit B. If they can divest themselves for a moment of the influence which self-interest furnishes, they will see that the logic of the situation sweeps Collective Exhibit A into the same net.

The Circuit Court of Appeals said in part (R., —):

> This article has borne various names, such as "seam binding," "featherstitch binding," "featherstitch tape," etc., but the name by which it has usually been called is "featherstitch braid." Indeed, while the article is not braided but woven, we should have little difficulty in adopting the conclusion of the Circuit Court and of the Board of Appraisers that prior to 1897 it was generally commercially designated as "featherstitch braid."

The Circuit Court of Appeals, however, found "the reasoning in the Steinhardt case persuasive," and failed "to find that the additional evidence requires any different conclusion." In that case no testimony was offered for the Government, and the Circuit Court relied on a dictionary definition of braid

as "a narrow, flat tape or woven strip for binding the edges of fabrics, or for ornamenting them." No appeal was taken, but another case (Vom Baur) was prepared in which evidence was introduced establishing commercial designation for such merchandise as featherstitch braids. (R., 152 to 283.) From the decision in the latter case, the importer took an appeal but did not prosecute it.

The Court of Appeals holds that the articles are not dutiable as braids, because they are "elsewhere specially provided for" as bindings. These braids are not bindings either in commercial or ordinary signification or in use, and therefore are not elsewhere provided for under that name.

The definition of braid relied on in the Steinhardt and in this case, to the exclusion of commercial designation, does not show that the articles are bindings. *They are not used for "binding the edges of fabrics," but "for ornamenting them."* The definition of binding controls. Webster, Worcester, and the Century all limit it to somthing that binds or secures the *edges* of cloth from unraveling. The Standard contains a similar limitation in its definition of the verb "to bind," which is—

> to strengthen or ornament at the *edge* with a bind; as to bind a carpet or garment.

The Century defines the verb—

> to form a *border or edge on*, for the purpose of strengthening or ornamenting; *edge;* as to bind a wheel with a tire; to bind a garment or a carpet.

Commercial usage accords with the ordinary meaning. The testimony for the Government is explicit that such articles are not called bindings in the trade. *Every witness called for the Government in this case so testified.*

Farrell (R., 103):

> Q. Would you call any of these exhibits I have shown you (referring to Collective Exhibits A, B, and C) bindings?
>
> A. I wouldn't call these bindings; no, not any of them.
>
> Q. They are not known in the trade as bindings?
>
> A. No, not as bindings.

Wilson (R., 107):

> By Mr. WASHBURN:
>
> Q. For covering seams or binding seams?
>
> A. For trimming. They are featherstitch braids, used for trimmings and used over the seams.
>
> Q. Seam coverings, aren't they?
>
> A. Yes.
>
> By Mr. NICHOLS:
>
> Q. How are they ordered?
>
> A. Featherstitch braids.
>
> Q. When you have said "seam coverings" you only described their use?
>
> A. Their use; they are put over the seams, on account of the fancy work on them; that makes them the trimming.
>
> Q. Could you use any of them as binding?
>
> A. No, sir.
>
> Q. They are never called bindings?
>
> A. No, sir.

Q. Are you familiar with what are known in the trade as bindings?

A. I buy them.

Q. You mean bindings are something entirely distinct from these exhibits?

A. Yes, sir.

Forsythe (R., 111):

Q. Can they be used as bindings?

A. No, sir.

Q. Are you familiar with what is known in the trade as bindings?

A. Yes.

Q. Are they an entirely distinct class of goods?

A. Yes; entirely.

Q. Would the fact that these Exhibits A and B are sometimes used to cover seams, would that make them bindings in any sense?

A. No; they couldn't be used as a binding; they are used as a finish, the narrow ones are used as a finish, where they join a seam together, like this here [indicating].

Stern (R., 118, 119):

Q. Are you familiar with what is known as bindings in the trade?

A. Yes, sir.

Q. And are they a different kind of article?

A. Different kind of articles.

Q. Sold as——

A. Sold as bindings.

Q. Referring to this Exhibit E, for instance, and the narrow piece of cloth that is used to cover the seam, made out of the same material

as the garment, is that what you call a—or what would you call that?

A. A binding tape.

Q. Does that in any way resemble any of these Exhibits A, B, or C?

A. No, sir.

Schloss (R., 125):

By Mr. NICHOLS:

Q. Are any of these goods known as "bindings" in the trade?

A. No.

By Mr. WASHBURN:

Q. You don't carry bindings, do you?

A. Yes; we sell and manufacture and buy bindings.

Williams (R., 126, 127):

Q. They are bought and sold under the name featherstitch braids?

A. No other term.

Q. Are any of them known as bindings?

A. I would say no.

Q. That is a distinct class of articles, bindings?

A. Yes.

Heaphy (R., 134):

Q. You have always bought them under the commercial term featherstitch braids?

A. Yes, sir.

Q. And they are not bought as bindings?

A. No, sir.

Q. Or by any other name in fact?

A. No, sir; featherstitch braids is the only term that is ever used by us.

There is, moreover, testimony of witnesses for the importer to the same effect. Importer Steinhardt, in his case, defined binding (R., 288) as—

> * * * a tape, of silk or cotton, for finishing articles, to finish the *ends*, to complete an article.

Blaskopf, importer's witness in the present case, after stating on cross-examination that the seam covering is a braid, testified on redirect examination (R., 38):

> Q. Do you call it a binding also?
> A. You can not very well call it a binding, no; more of a braid, finishing braid.
> Q. It is, however, a seam binding?
> A. It is a seam banding.

"Seam bindings," one of many subsidiary terms applied to these braids, is merely descriptive of use as coverings of seams. Cotton "bindings," commercially, is a specific term for tapes or strips used to bind the edges of garments. They are folded or doubled over the edge. (R., 38, 100, 102 to 104, 107, 111, 112, 114, 116, 118, 125 to 127, 134, 144 to 146.) So-called "seam bindings" do not bind anything, but, as admitted by witnesses for the importer, are used flat to cover seams, and give the garment a better or finished appearance. (R., 34, 45, 63, 144 to 146.) Efforts of counsel for the importer to show that *silk taffeta* bindings are used flat (R., 130, 135, 136, 141) do not tend to prove that cotton bindings are so used.

Featherstitch braids are more expensive and elaborate than bindings, and are used essentially to ornament or embellish garments (R., 39, 40, 45, 46, 52, 58, 91, 92, 103 to 107, 118, 119, 127, 135, 143, 144 to 147), *while bindings serve a practical use, namely, to keep edges from unraveling.*

In 1897 braids, galloons, and other articles in the nature of trimmings, used to ornament or give finish to garments, were taken out of the paragraph for articles of utility like tapes, and put into the paragraph for laces and embroideries, and bindings (cotton) were provided for *eo nomine*, for the first time, in the former paragraph. The two articles belong to different classes. In *Hiller* v. *United States, supra*, deciding that cotton braids of all kinds are within paragraph 339 of the tariff of 1897, it was said:

> * * * A comparison of the provisions of the cotton schedules in the acts of 1894 and 1897 in regard to the classification of braids, is, however, quite significant of the intent of Congress. Paragraph 263 of the act of 1894, which corresponded to paragraph 320 of the act of 1897, imposed a duty of 45 per centum ad valorem upon cords, braids, etc., made of cotton, but braids are omitted in paragraph 320 of the new act, which imposed the same duty. Paragraph 276 of the act of 1894, which corresponded to paragraph 339 of the new act, omitted braids, which was inserted in paragraph 339, the one under consideration. *This comparison of the two acts indicates that Congress intentionally took braids out of the 45*

per cent paragraph, where it had been in 1894, and put the article into a paragraph imposing a higher rate of duty; and that it intended to impose the rate upon the articles generally, irrespective of the use to which they might be applied.

It does not follow from the use of the phrase "not elsewhere specially provided for" in paragraph 339 of the tariff act of 1897 that some *braids* are elsewhere specially provided for. The paragraph contains general terms, like lace and embroidered articles, to which the phrase may be applied without including enumerations *eo nomine* such as braids. It does not follow that because the words of limitation are applicable to *some* of the articles named in the paragraph they must be applicable to *all*, and require search to be made elsewhere in the act for more specific designation of articles provided for *eo nomine*.

The rule that for tariff purposes commercial designation of an article, when clearly established, fixes its character, is not deprived of its ordinary application by such expressions as "not otherwise provided for" or "not specially provided for." The case of *Arthur* v. *Lahey* (96 U. S., 112, 118) is directly in point. In summing up the conclusions reached in that case, the court said:

> 1. The commercial designation of an article among traders and importers, when clearly established, fixes its character for the purpose of the tariff laws.
>
> 2. When Congress has designated an article by its specific name, and imposed a duty upon

it by such name, general terms in a subsequent act, or in a later part of the same act, although sufficiently broad to comprehend such article, are not applicable to it.

3. That the expression, "not otherwise provided for," in the eighth section of the act of 1864, does not deprive these rules of their ordinary application.

See also *United States* v. *Schwarz* (140 Fed., 302); *Thomas* v. *Schwarz* (140 Fed., 989).

The principle adopted by the Court of Appeals is, it is insisted, in direct conflict with the rule here stated. The evidence shows, and the Board of General Appraisers, the Circuit Court, and also the Court of Appeals have all found that the merchandise in question is "featherstitch braid;" and "braid" is specifically provided for *by name* in paragraph 339. On the other hand, "braid" is not mentioned in paragraph 320, but the Court of Appeals found, by referring to one dictionary, that the word "binding" might include a form of braid, and hence held that it was "specially provided for" there. It is difficult to perceive how it was there "specially provided for," when it had to be spelled into another word by the use of a dictionary. The word "specially," as here used, must mean something more definite than as held by the court. If such a rule should be applied generally to tariff provisions, it would render almost impossible efficient administration of the law, and the designation of an article by name in a paragraph with such words of limitation would mean practically nothing, as one would have

to take his dictionary in hand and turn to the other paragraphs to ascertain whether there might not be a word elsewhere which would embrace it.

That the adoption of such a rule of interpretation would be unfortunate is shown by the fact that the result would sometimes depend upon what dictionary might be consulted by the court. This is well illustrated by the present case, as the Court of Appeals relies upon the definition of binding as given in the Standard Dictionary, whereas the definition here applicable of the word "binding" as given by Webster is "something that secures the edge of cloth from raveling," and the word "braid" is not used at all. The court would certainly not have held that the "braid" in question was specially provided for in the word "something." (*Koechl* v. *United States*, 84 Fed., 448, C. C. A.)

That cotton "braids" and "bindings" are independent enumerations *eo nomine* and stand for different articles is shown beyond a doubt by the tariff of 1909, which provides for braids and bindings in the same paragraph—349—and makes both dutiable at 60 per cent ad valorem.

The fact that the braids in issue were woven on a loom and not made on a braiding machine is immaterial, as shown by the decisions in other braid cases, *supra*, and by the principle repeatedly declared that the method of fabrication does not control classification, and indeed by the holding of the Circuit Court of Appeals in this case.

The importer admits that a large portion of the merchandise in suit—all represented by importer's Collective Exhibit C, and part, at least, of Exhibit B—is dutiable as braids, and, as stated by the Circuit Court (R., 305), "the logic of the situation sweeps Collective Exhibit A into the same net."

In view of the importance of this issue and of conflict of decisions, and of apparent error of the court below, it is respectfully asked that the writ of certiorari be granted.

LLOYD W. BOWERS,
Solicitor-General.

D. FRANK LLOYD,
Deputy Assistant Attorney-General.

JANUARY, 1910.

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In the Supreme Court of the United States,

OCTOBER TERM, 1909.

THE UNITED STATES, Petitioner, vs. LEOPOLD BARUCH, Respondent.	No.

BRIEF OPPOSING PETITION FOR CERTIORARI.

Statement.

The Solicitor General errs in stating on page 21 of his brief that importers admit "part at least of Exhibit B is dutiable as braids." The respondent contends that the narrow goods like Exhibits A and B (primarily articles of utility) are bindings by ordinary meaning, by fabrication, by use, as well as by trade understanding, trade practice and trade nomenclature, and admits that wide goods like Exhibit C (primarily articles of ornamentation which are not involved in this petition) are braids in the nature of trimmings and not otherwise provided for than in paragraph 339. He further contends that Exhibits A and B fail to meet the description "braids not elsewhere specially provided for," in that they are specially provided for under the specific provision in paragraph 320 for cotton "bindings," *which was inserted for the first time in tariff legislation in the Act of 1897.*

I.

There is no conflict of decisions of courts in the same or different circuits. On the contrary, the granting of this writ would result in bringing before this Court for review but one opinion of a Circuit Court of Appeals.

The Government contends that the writ should be issued "if for no other reason, because decisions of courts in the same or in different circuits are in conflict" and cites in support of its contention six cases in which it alleges different conclusions have been reached on the question decided by the Circuit Court of Appeals in the present case. The cases relied upon to sustain this contention are:

In re Dieckerhoff, 54 Fed. Rep., 161.
Hiller vs. United States, 106 Fed. Rep., 73.
Steinhardt vs. United States, 121 Fed. Rep., 442.
Hague vs. United States, T. D. 25, 466— not reported in the Federal Reporter.
Vom Baur vs. United States, 141 Fed. Rep., 439.
Marshall Field & Co. vs. United States, T. D. 29, 548, Suit 2015.

Four of the foregoing cases, the Dieckerhoff, Steinhardt, Hague and Vom Baur cases, all arose in the Southern District of New York, and were all considered by the Circuit Court of Appeals in the present case, as will be seen by a reference to the opinion of the Court.

In only two of these cases was there any opinion. The Dieckerhoff case, one of these, and the first case relied on by the Government, was brought under the Act of 1890, wherein there was a provision for braids, not qualified as in the Act of 1897 by the words not specially provided for. The Court below in its opinion, which is printed as an appendix to this brief, clearly distinguishes this case in the following language:

> "This decision (the Dieckerhoff decision), however, has no special bearing upon the question now under consideration because, as we have seen, bindings were not provided for in the act of 1890. Featherstitch

braids may well not be trimmings within the ornamental article paragraph of the earlier act and yet be bindings within the useful article paragraph of the act of 1897.

"The Government, however, insists that in view of the Dieckerhoff decision it must be presumed that, when Congress used the word 'braids' in the act of 1897, it intended that it should apply to featherstitch braids. As just pointed out, however, all that that case held was that the articles were braids and not trimmings. It did not hold that they were not bindings. And Congress used the word 'braid' only with words of qualification."

In the other case in which an opinion was filed—the Steinhardt case—the Circuit Court held that the articles, if braids, were bindings as well, and therefore dutiable under Paragraph 320, as decided by the Circuit Court of Appeals. The decision in the Steinhardt case was followed by the Hague case. This latter case is reported only in T. D. 25, 466, where this footnote appears :

"In this case the Government has prosecuted an appeal to the Circuit Court of Appeals for the second circuit."

Subsequently this appeal was dismissed without consent upon an *ex parte* affidavit of the United States Attorney for the southern district of New York, as the Court records show.

T. D. 25, 901, Suit 3214.

The remaining case brought in the southern district of New York—*Vom Baur vs. United States*—was decided *contra*, but the Circuit Court rendered no opinion on the subject, and simply affirmed the decision of the Board of Appraisers without opinion of its own. The Circuit Court of Appeals for the Second Circuit reviewed that decision and overruled it in the case at bar, *so that there is only one authoritative opinion on this issue in that circuit—the opinion to which this petition for certiorari is directed.*

The remaining two cases cited by the Government—*Hiller vs. United States* and *Marshall Field & Co. vs. United States* —may easily be disposed of. All that was decided in the Hiller case was that the word "including" in paragraph 339

("trimmings, including braids") was used not by way of specification, but by way of addition. The merchandise involved, unlike that in the case at bar, was certain shoe lace braids, concededly braids in fabrication, and not known by any other name. In other words, the Court's attention was directed exclusively to the force and effect of the word "including" in paragraph 339 and the precise issue here sought to be reviewed was not before the court.

In the Marshall Field case, the last case relied upon by the Government, the Circuit Court for the Northern District of Illinois, without argument, affirmed the decision of the Board of United States General Appraisers, following the then latest expression of a court of co-ordinate jurisdiction, that of the Circuit Court for the Southern District of New York in the case at bar, subsequently reversed by the Circuit Court of Appeals for the Second Circuit. After the decision in the case at bar was rendered, the appeal of *Marshall Field & Co. vs. United States*, when it was reached on the docket of the Circuit Court of Appeals for the Seventh Circuit, was dismissed and an order of dismissal, duly consented to, was formally entered. The Court thus disposed of the appeal without any hearing on the merits.

The Government urges that the dismissal of this appeal was equivalent to an affirmance of the decision of the Circuit Court and that therefore there is a conflict of opinion between the Circuit Court of Appeals for the Second Circuit and the Circuit Court of Appeals for the Seventh Circuit. The consent order of dismissal of the appeal in the Marshall Field case was in the following language:

> "it is Ordered that the appeal herein be and the same is hereby dismissed."

It thus clearly appears that no judgment of affirmance or decree was entered, and it is respectfully insisted that the dismissal without any hearing on the merits is not equivalent to a decision on the merits, nor is it, as claimed by the learned Solicitor-General, entitled to the same weight as the decision in the Second Circuit in the case at bar.

United States vs. Gomez, 23 How., 326, 339.
Aurora City vs. West, 7 Wall., 82, 93.
Greene vs. United Shoe Machinery Co. (C. C. A.) 124 Fed. Rep., 961, 964.

In *United States vs. Gomez* (*supra*), this Court said:

> "A motion to docket and dismiss a cause from the failure of the appellant to file the record within the time required by the rule of this court, when granted, is not an affirmance of the judgment of the Court below."

In *Aurora City vs. West, 7 Wall., 82, 93,* Mr. Justice CLIFFORD, speaking for this Court said:

> "Unless a final judgment or decree is rendered in a suit, the proceedings in the same are never regarded as a bar to a subsequent action. Consequently where the action was discontinued, or the plaintiff became non-suit, or where from any other cause, except perhaps in the case of a *retraxit*, no judgment or decree was rendered in the case, the proceedings are not conclusive.'

In *Greene vs. United Shoe Machinery Co.* the Circuit Court of Appeals for the First Circuit said:

> "We may well add here that the Supreme Court has
> "shown a growing tendency to approve the practice of
> "making it clear that a dismissal is without prejudice,
> "or without a hearing on the merits, when there has
> "been no such hearing."

Further, this Court has held, as to its own decisions, that where a question was not contested in one case, the Court would not hold itself bound by the view expressed in that case, in a subsequent case where the question was contested.

Cross vs. Burke, 146 U. S., 82, 87.
United States vs. More, 3 Cranch, 159, 172.

> "A motion to dismiss an appeal in effect requests the Appellate Court to refuse examination of the merits of the cause."
>
> *Carlson vs. Alameda County,* 70 Cal., 630.
> *Hall vs. El Dorado County,* 68 Cal., 24.
> *Matthews vs. Marion County,* 68 Cal., 638.

> "Questions, therefore, which affect the merits will not be considered by the Appellate Court on such a motion, as they are grounds for reversal or affirmance of the judgment."
>
> *Nelson vs. Leland,* 22 How., 48, 49.
> *Day vs. Washburn,* 23 How., 310, 312.
> *Hill vs. Chicago, etc. Ry.,* 129 U. S., 170, 174.

> "It is the general rule that the appellant may have his own appeal dismissed at any time while the cause remains within the jurisdiction of the Appellate Court."
> *Latham vs. U. S.*, 9 Wall., 145.

The appellee is entitled to costs on such dismissal, but can not object, nor is his consent required.

Latham vs. U. S., 9 Wall., 145.
Deming's Appeal, 10 Wall., 251.

> "A decision dismissing an appeal removes the whole cause out of the Appellate Court, and remits the parties to their legal rights and condition existing prior to the taking of the appeal."
> *U. S. vs. Gomez*, 23 How., 326.

See

Ency. Pl. & Pr., Vol. 2, 346, 350, 351.

We submit that the foregoing authorities conclusively show that there is no warrant for the Government's contention that there is any conflicting decision by reason of the action of the Circuit Court of Appeals, Seventh Circuit, in dismissing the appeal.

This action was in point of fact no more an adjudication upon the merits than was the action of the Circuit Court of Appeals for the Second Circuit in dismissing the Government's appeal in the Hague case, *supra*. There is no contention on the part of the learned Solicitor General that that dismissal was equivalent to a decision on the merits.

II.

As to the amount of revenue involved, and the alleged importance of the issue.

The learned Solicitor General states on page 9 of his brief:

> "On June 26, 1909, 3,351 protests involving duties calculated at $104,110.50 were held in the suspended files of the Board of General Appraisers awaiting a determination of this issue."

These protests which are now, for the most part, covered by suits pending in various Circuit Courts of the United States, chiefly in the Southern District of New York, on records identical to the one here involved, were filed during the lifetime of the Act of July 24, 1897, and cover a period of substantially twelve years. In other words, the Government has illegally exacted under the decision here sought to be reviewed an excess of duties approximating $8,600 a year on the average, which would not seem to make this issue one of great importance, relatively speaking, because of the amount of revenue involved.

This issue is of interest to only a limited group of importers, and no longer affects the trade and commerce of this country. The tariff act under which the question arose has been repealed, and the controversy does not continue under the tariff act of August 5, 1909. Hence this case is not one "of public concern," nor are the questions involved "of such gravity or general importance as to require the review of the conclusions of the Circuit Court of Appeals in reference to them."

In re Woods, 143 U. S., 202, 206.

Upon analysis it will be found that no important principle of classification is involved in this suit, but rather the question of fact which Judge NOYES carefully considered and passed upon in his opinion, whether or not the articles in controversy were braids that were elsewhere more specifically provided for in the Tariff Act of 1897 than in paragraph 339.

III.

The rule of classification by commercial designation is not applicable because the language of the paragraphs in question is descriptive rather than commercial.

The language of the competing paragraphs in so far as relevant is as follows :

> "339. * * * Embroideries and all trimmings, including braids, * * * ; all of the foregoing composed wholly or in chief value of flax, cotton, or other vegetable fibre, and not elsewhere specially provided for in this Act, whether composed in partof india rubber or otherwise, sixty per cent. ad valorem."

> "320. Bindings, * * * any of the foregoing articles made of cotton or other vegetable fibre, whether composed in part of india rubber or otherwise, and not embroidered by hand or machinery, forty-five per centum ad valorem."

This language is plainly descriptive, and not commercial. Under the decisions of this Court, the doctrine of commercial designation, therefore, in the present instance is not of primary importance.

In *Barber vs. Schell*, 107 U. S., 617, certain laces and insertings composed wholly of cotton were involved. Mr. Justice BLATCHFORD, speaking for this Court, said (p. 621) :

> "The designations qualified by the words 'cotton', in the act of 1846, are designations of articles by special description, as contradistinguished from designations by a commercial name or a name of trade. They are designations of quality and material. * * * This was the view applied by Mr. Justice NELSON in *Reimer vs. Schell*, 4 Blatchf., 328, in 1859, to colored cotton hosiery, under the provisions in question, and we think it a sound one. It was the view adopted by the Circuit Court in this case. There is no question of commercial designation. Hence, the cases cited and relied on by the importers are not in their favor."

Thereupon the Court proceeded to distinguish numerous cases, notably *Arthur vs. Lahey, 96 U. S., 112*, cited by the learned Solicitor General on page 18 of his brief.

Furthermore the reasoning of this Court in *United States vs. Klumpp, 169 U. S., 209, 216*, shows conclusively that the case of Arthur vs. Lahey is not in point.

The question in the Klumpp case was whether certain worsted dress goods were or were not affected by a provision for a reduction in duties on manufactures of wool, and Mr. Chief Justice FULLER delivering the opinion of the Court, in holding that they were, said:

> "It will be perceived that the Acts of 1890 and 1894 did not levy duty on 'worsted dress goods' *eo nomine*, nor on worsted dress goods by commercial designation, nor on worsted dress goods as distinguished from woolen dress goods; but a duty on dress goods, whether made of 'wool, worsted, the hair of the camel, goat, alpaca or other animals'. The description is addressed to the quality and material of the goods, namely, women's and children's dress goods, made of wool, worsted, etc.
>
> "The principle then that the special designation of an article by its commercial meaning should prevail over general terms used in the same or a later act, has no application."

So, here, Congress has not designated this merchandise by its specific name, featherstitch bindings, or seam bindings or featherstitch braids, but has inserted a broad descriptive provision in paragraph 339 to include such braids composed wholly or chiefly of cotton, flax, or jute as were not elsewhere specially provided for in the Act.

The cases cited by the learned Solicitor General on page 9 of his brief are not in point. When analyzed they will be found to construe not descriptive language but *eo nomine* unlimited provisions of the statute shown to have definite, trade meanings. Thus:

"Vegetables," *Robertson vs. Salomon*, 130 U. S., 412; "Cotton Bagging," *Curtis vs. Martin*, 3 How., 106; "Silk Veils," *Arthur vs. Morrison*, 96 U. S., 108; "Finished Furniture," *Hedden vs. Richard*, 149 U. S., 346; "Gilling Twine," *American Net & Twine Co. vs. Worthington*, 141 U. S., 468;

"Toys," *Cadwalader vs. Zeh*, 151 U. S., 171; "Tapioca," *Chew Hing Lung vs. Wise*, 176 U. S., 156; "Wool," *Goat & Sheepskin Import Co. vs. United States*, 206 U. S., 194.

Greenleaf vs. Goodrich, 101 U. S., 278, cited on page 9 of the Government brief, holding the words "delaines, * * * composed wholly or in part of worsted, wool, mohair, or goat's hair, and on all goods of similar description" to be descriptive, supports the respondent's contention that the rule of commercial designation is not applicable when it appears from the statute itself that the dutiable merchandise is referred to in descriptive terms rather than in the phraseology employed in trade. The language of paragraph 339 is not "braids," but, as we have seen, "trimmings, including braids, * * * ; all the foregoing composed wholly or in chief value of flax, cotton or other vegetable fibre, and not elsewhere specially provided for in this Act."

In *Schiff vs. United States, 99 Fed. Rep., 552* (C. C. A., Second Circuit) it was said with reference to a provision for braids * * * composed of straw, etc.:

> "We have here no question of commercial designation. The tariff act does not lay duty upon 'straw braid'—a term which might have a definite meaning in trade and commerce—but upon 'braids composed of straw,' etc., and there is no evidence that the words 'straw,' 'chip,' or 'grass,' when applied to the raw material, have any peculiar commercial meaning."
>
> 99 Fed. Rep., p. 557.

IV.

Congress in transferring the unqualified provisions for "braids" from the notions paragraph (263) of the Act of 1894 to the trimmings paragraph (339) of the Act of 1897, making it read "trimmings, including braids," and further restricting its operation by adding the clause "not elsewhere specially provided for," and at the same time inserting a provision for the first time in tariff legislation for "bindings * * * of cotton" without words of qualification or restriction, clearly expressed its intention to limit the high tax of 60 per cent. to such braids as were not bindings.

Congress provided for cotton bindings for the first time in the law of 1897. What did it have in mind? We turn to a decision of the Board of General Appraisers rendered more than two years prior to the passage of the Act of 1897, to wit, on January 7, 1895, known as G. A. 2850, on a protest of C. M. Vom Baur, the appellant in *Vom Baur vs. U. S.*, 141 Fed., 139, wherein the Board said:

> "The merchandise here is *cotton braid, known as 'seam bindings,'* * * * *that it is used for seam binding;* that it is similar to a feather-stitch braid." (Italics ours.)

The Board recognized that the goods were known as bindings, and used as bindings; in the absence of a provision for bindings, they were held as braids, following the Dieckerhoff case (54 Fed., 161).

Then came the law of 1897, and we answer the question of the learned Judge at Circuit "Did or did not Congress have these things in mind when the Tariff Act of 1897 was passed?" Congress *did* have these things in mind because it inserted into the law an absolute and unqualified provision for "bind-

ings * * * of cotton" and removed what had before been an unqualified and unrestricted provision for "braids," from the *notions* paragraph to the *trimmings* paragraph, but with its scope materially cut down by the addition of the words "not elsewhere specially provided for."

The Board decision in 1895 construed in connection with the change in the Dingley Law in 1897, two and one-half years afterwards, is most significant. For an instance of the great importance attached by this Court to a Board decision in 1894, construed in the light of the succeeding tariff of 1897 (see *Komada & Co. vs. United States*, No. 220, October Term, 1909), involving the classification of a Japanese beverage, known as Saka, decided January 3d, 1910, reported in T. D. 30253.

The Respondent is seeking in the case at bar to have the goods classified under the paragraph in the Act of 1897, according to paragraphs under which they were classfied in the Acts of 1890 and 1894, that is to say, the "notions" paragraph.

The braids which are subject to the high tax of 60 per cent. are those braids which are not bindings. There are, as found by the Circuit Court of Appeals, braids (like Exhibits A and B) which are bindings, and other braids (like Exhibit C) which are not bindings; the former serve chiefly an utilitarian purpose in covering seams or preventing the raveling of raw edges of garments; the other variety are ornamented or decorative and in the nature of trimmings. Such is common knowledge.

Binding: "A braid or strip folded and sewed on the edge of any fabric, or sewed over the place where the parts are joined, so as to protect and secure the parts covered by it."

Standard Dictionary.

Braid: "A narrow flat tape or woven strip for binding the edges of fabrics or for ornamenting them."

Standard Dictionary.

And Congress recognized this distinction, because in enacting the law of 1897, it struck out the word "braids" from the notions paragraph (320), and substituted in its place the word "bindings," and then carried over the word "braids" to the "trimmings" paragraph (339), but said "trimmings, including braids, * * * not elsewhere specially provided for."

In this connection it is most important to note and to have clearly in mind the general scope of paragraph 339 as compared to the general scope of paragraph 320. 339 is distinctively the vegetable fibre trimmings paragraph of the Dingley law providing as it does for insertings, flouncings, nettings, rufflings, ruchings, tuckings, galloons, laces, embroideries, trimmings, etc., the primary or main purpose of which is for the embellishment or ornamentation of dresses or outside garments, which group of articles is handled, broadly speaking, by dealers in trimmings, as distinguished from dealers in notions or small wares; whereas paragraph 320, on the other hand, is distinctively the vegetable fibre notions paragraph of the Dingley law, providing, as it does, for bandings, beltings, bindings, bonecasings, cords, ribbons, tapes, webbing, etc., all of which are primarily or mainly articles of utility, and handled by dealers in notions and small wares. And in this connection it should be noted that all witnesses agree that these goods are carried not in braid or trimming departments but in notion departments.

As the Court below very pertinently said in its opinion :

> "The question is, not whether the articles are braids, but whether they are braids not elsewhere provided for in the act. * * * But these feather-stitch braids, being used for the purpose of binding seams, are, in our opinion, the kind of braids properly called bindings. And we think that it may fairly be assumed that, when Congress inserted the word 'bindings' in the 'notions' paragraph and transferred the word 'braid' to the 'trimmings' paragraph with words of qualification it intended to embrace in the latter paragraph only such braids as were not bindings. If the articles are bindings, as well as braids, the provision in the 'notions' paragraph is the more specific. Bindings are embraced without the words of restriction or qualification. These articles as bindings are necessarily included, and they are specially provided for elsewhere than in paragraph 339."

The soundness of the doctrine that a provision which is absolute and exclusive in its phraseology is of superior governing force to one qualified by the phrase "not else-

wher specifically provided for " has been repeatedly recognized by this Court.

Barber vs. Schell, 107 U. S., 617, 520;
Hartranft vs. Meyer, 135 U. S., 237;
Arthur's Exr's. vs. Vietor, 127 U. S., 572;

The argument of the learned Solicitor General on page 18 of his brief that the words of limitation " not elsewhere specially provided for " should be applied to only some of the articles named in paragraph 339 is fully answered by reference to the statute itself which reads: "all of the foregoing, composed," etc.

V.

The merchandise is bindings in fact, by fabrication, and by use, and being primarily a notion article and not a trimming article, its logical place is in Paragraph 320 and not in Paragraph 339.

(1) By fabrication the goods represented by Exhibits A and B are bindings.

> " The articles in dispute (collective Exhibits A, B & C) are woven on a loom. Tapes and bindings are made that way. Braids are usually made on a braid machine. The manner of making, therefore, leads us towards tapes and bindings in paragraph 320. * * * "
>
> Decision Circuit Court (p. 304).

(2) By ordinary meaning and by use the goods are bindings.

The Standard Dictionary definition of bindings appears on page 12 of this brief.

Spons' Encyclopædia of Industrial Arts, page 1762, defines bindings as follows:

> " Bindings are kindred articles to braids, but usually of rather different texture; the two

SIDES ARE NOT ALIKE, THE FRONT HAVING A DIAGONAL OR HERRINGBONE TWILL, WHILE THE BACK IS PLAIN."

The overwhelming mass of testimony in the case at bar proves that the chief use of these goods, and the main object of applying them, is for binding purposes within these definitions—to sew over the place where two parts are joined (seams), so as to protect and secure the parts, or, as the learned Judge at Circuit put it, " to cover and unite the raw edges." Their chief service is one of utility. The Circuit Court of Appeals in the present case said :

> " But these featherstitch braids, being used for the purpose of binding seams, are, in our opinion, the kind of braids properly called bindings."

On the question of use see

Sonn, fol. 125.
Weiller, fols. 148, 892.
Hyman, fols. 694, 696.
Steinhardt, fols. 554, 862–863.
Hilder, fol. 192.
Yankauer, fol. 214.
Lewit, fols. 249, 257.
Alvis, fols. 275–6.
Miss Forsythe (Gov.), fol. 343.
Williams (Gov.), fol. 389.
Von Baur fol. 472.
Hague (Gov.), fols. 524, 533.
Horrax, fol. 718.
Herman, fols. 733, 738.
Martin, fols. 752–754.
Jacobs, fols. 759–760.

The testimony of ten other witnesses on the subject of use, merely cumulative of the foregoing, is found at folios 94, 101, 178, 229, 419, 421, 694, 742, 875, 882, 902.

To what articles or class of goods, then, can the provision for bindings be more appropriately applied than to the merchandise in suit, represented by Collective Exhibits A and B ?

VI.

If the rule of commercial designation is to apply then the A and B goods by trade practice, trade understanding and trade name are also bindings.

What the Government is really seeking to do here as evidenced by the argument of the Solicitor General in the entire last half of the brief is to have this court review the finding of fact made by the Circuit Court of Appeals that the articles in controversy are "bindings as well as braids."

The learned Solicitor General states on page 13 of his brief:

> "The testimony for the Government is explicit that such articles are not called bindings in the trade. *Every witness called for the government in this case so testified.*"

and then sets forth excerpts from the testimony of seven witnesses on pages 13–15. It is to be noticed that the testimony of six of these seven witnesses (Farrell, Wilson, Forsythe, Stern, Williams and Heaphy) is incompetent. They were all connected with retail New York dry goods stores, and could not therefore testify as to the understanding of the wholesale trade. It is not the usage of the *retail* trade which brings a provision within the rule of commercial designation, but is the understanding of that trade which buys and sells at *wholesale.*

Morrison vs. Miller, 37 Fed. Rep., 82.
Stewart vs. United States (C. C. A.), 113 Fed. Rep., 928.

But a conclusive answer is found in the testimony of other *Government* witnesses who in fact were wholesale dealers as appears from the printed record:

STOCKUM (Gov., fols. 485–6):

Q. What does that say ?
A. The word on there says featherstitch braids but we don't buy these goods as featherstitch braids.
Q. How do you buy them ?
A. Buy them as cotton binding.
Q. Do you order them that way ?
A. We order them that way, buy them that way, as such, and sell them as such.
Q. How are they invoiced to you ?
A. As bindings.

KELLER (Gov., fol. 511):

Q. Is it true they are usually sold and billed as featherstitch braids ?
A. No.
Q. How are they usually known ?
A. Well, they use in my experience with these goods all kinds of names—herringbone binding, seam binding, featherstitch braids, finishing braid, finishing tape, finishing binding—in fact, the three words are synonymous with this class of goods, tape, binding or braid."

HAGUE (Gov., fols. 528–9):

Q. The great bulk of your customers are manufacturers ?
A. No, mostly, the wholesale jobbing trade.
Q. How do they order ?
A. Under various designations.
Q. Which is the most general one that you know of ?
A. Binding.

KRACHEHL (Gov., fol. 562):

Q. Do you know of any term which describes the goods as specifically as featherstitch braids ?
A. Yes, sir.
Q. What is that term ?
A. Seam tape, featherstitch binding, seam covering.

THE EVIDENCE FURNISHED BY THE WHOLESALE DEALERS IN NOTIONS IS OVERWHELMINGLY TO THE EFFECT THAT THE ARTICLES IN SUIT ARE BINDINGS ACCORDING TO TRADE NOMENCLATURE.

BARUCH (fol. 96):

> Q. Would a request, for example, for a complete line of bindings and tapes, especially bindings, be complete without an assortment of goods represented by these two Collective Exhibits A and B?
>
> A. No.

HYMAN (fols. 155, 157):

> Q. Would the term binding and herringbone binding be a narrower and more specific term to cover goods of this character (referring to Collective Exhibit A?
>
> A. Yes.
>
> * * * * * *
>
> Q. The use of goods represented by Exhibit B practically the same as Exhibit A?
>
> A. Yes, sir.

STEINHARDT (fol. 170):

> Q. Would a request for a complete line of samples of bindings and tapes, especially bindings, be complete without the inclusion of featherstitched goods, such as are represented by the Collective Exhibits A and B?
>
> A. No, sir.
>
> See, also, fols. 171, 172, 855, 856, 864.

HILDER (fol. 194):

> Q. Would an order for bindings be complete without the inclusion of samples like the official exhibits?
>
> A. It would not.
>
> See, also, fol. 198.

YANKAUER (fol. 216):

> Q. Would an order for binding in your trade, Mr. Yankauer, be complete without including articles like the official exhibits, not, however, referring to the Exhibit C?
>
> A. No, it would not.

FARMER (fol. 230) :

Q. Would you say that the term binding would more narrowly describe the goods than any other term, more specifically ?

A. I should think so.

VOM BAUR (fol. 475) :

Q. Do you consider as a merchant that it would have been at any time possible to completely fulfill the trade meaning of the term bindings without including these goods ?

A. No.

BERG (fol. 702) :

Q. Referring to a period at and prior to 1897, please state the name or names by which that product was bought and sold in trade ?

A. As long as I have been dealing in it they have been known as seam binding, principally covering up seams.

HARRAX (fol. 728) :

Q. By what names are they usually bought and sold, as I understand you to say ?

A. Seam binding.

NEUBERGER (fol 741) :

Q. Please state the name or names by which at and before 1897, that merchandise was designated among merchants in the markets of this country ?

A. Seam bindings, featherstitching, featherstitch bindings ; half a dozen names I have heard.

Q. You have heard them called featherstitch braids, have you not ?

A. I have.

WEILLER (fols. 897, 898) :

Q. Now if a merchant were to ask for a list of the things which are bindings, could he make a complete

list, adhering to the understanding of trade, without including these featherstitch braids under the list?

A. No.

See also

Ferguson, fol. 417, 418.
Ganong, fols. 867, 868.
Connell, fol. 884.
Klemschmidt, fol. 901, 903.

The only witnesses in this entire record who represented or purchased merchandise for dry goods concerns outside of New York, to wit, for concerns in the South and West, agreed that in those sections the merchandise was generally termed and purchased by their houses under the name of seam bindings or featherstitch bindings.

Fantl, fols. 290–293.
Ferguson, fols. 417–420, 445.

THE OVERWHELMING PREPONDERANCE OF TESTIMONY OF THE MANUFACTURING CONSUMERS AS A CLASS, NAMELY, THE MAKERS OF UNDERGARMENTS, INFANTS' CLOTHING, CAPS, WAISTS, ETC., NINE IN NUMBER, WHO WERE CALLED AS WITNESSES IN THIS CASE, WHO BOUGHT AND USED THE GOODS IN WHOLESALE QUANTITIES, WAS THAT THEY HAD ALWAYS REGARDED THEM IN THEIR TRADE AS BINDINGS

Seven of these nine manufacturers (namely, Gideon, Lewit, Alvis, Herman, Martin, Jacobs and Blaskopf) did not employ the term featherstitch braids in any portion of their testimony, and three of them did not recognize the merchandise at all under the name of featherstitch braids.

Gideon, who handled the goods since 1880, testified that herringbone, featherstitch, herringbone binding and featherstitch binding were the only names he had ever known them by (fols. 180–181).

Lewit, who had used the articles in large quantities for many years, stated in effect that they were regarded in his trade as bindings and not as braids (fols. 252–253, 259).

Alvis, with 24 years' experience, testified that an order for seam bindings or herringbone bindings would be filled by the delivery of goods of this character (fol. 265).

The record points to the fact that "featherstitch braids" is a foreign term, first invented by foreign manufacturers (fols. 513, 514, 148, 156, 164, 195-6, 532-3).

Blaskopf alluded to the merchandise as braid or seam banding rather than bindings, but he referred to it also under the name of "seam binding" (fol. 105), and testified that "finishing tapes" was a name just as generally employed as any of the others that he mentioned (fols. 118, 119). He contrasted plain bindings with fancy bindings (fol. 122). Nowhere in his testimony did he use the term featherstitch braid.

Sonn, in his answers, repeatedly referred to the merchandise as binding or herringbone binding (fol. 134). He admitted some familiarity with the term featherstitch braid, but testified that the term binding would more aptly describe the goods, and that herringbone binding was the most common word used in this country, and that that was the original name (fols. 130-132).

See, also,

Herman, fol. 733.
Martin, fols. 753, 754.
Jacobs, fol. 760.

Not only has it not been shown in the case at bar that, at the time the Act of 1897 was passed and prior thereto, the word "bindings" had a trade signification different from its ordinary meaning (which includes the articles in suit), but it has been affirmatively shown that by recognized trade usage the word "bindings" was one of the commercial names for the articles like Exhibits A and B.

Batterson vs. Magone, 48 Fed. Rep., 289.

The truth is, as a reading of the record will show, that goods represented by Exhibits A and B were known in different trades and in different part of this country under various names, such as seam bindings, featherstitch bindings, featherstitch braids, as well as by other names. Indeed, it is asserted with some confidence that a reading of the record will lead to the conclusion that it is very doubtful if there

was any definite, uniform, and general commercial designation of the goods in suit as featherstitch braids in the trade and commerce of this country within the rule as laid down by this Court in

Maddock vs. Magone, 152 U. S., 368, 371.
Berbecker vs. Robertson, 152 U. S., 372, 376.
Sonn vs. Magone, 159 U. S., 417, 421.
Patton vs. United States, 159 U. S., 500, 506.

VIII.

Supplementing Point IV., the soundness of the respondent's contention is further shown by the history of tariff legislation.

The learned Solicitor General, on page 20 of his brief, states:

> "That cotton 'braids' and 'bindings' are independent enumerations *eo nomine* and stand for different articles is shown beyond a doubt by the tariff of 1909, which provides for braids and bindings in the same paragraph, 349, and makes both dutiable at 60 per cent. ad valorem."

The significance of the changes in phraseology which appear in the Act of 1897 are clearly set forth in the opinion of the Court below. We have already alluded to the fact (Brief, p. 11) that the Board in G. A. 2850 passed upon cotton braids "known as 'seam bindings' and 'used for seam binding,'" and to the definition in Spon's Encyclopaedia (Brief, p. 14) defining bindings as kindred articles to braids. In G. A. 2188, T. D. 14224, the Board of General Appraisers in 1892 also referred to bindings and braids as overlapping or synonymous. Furthermore, it appears that the only parties who asked for high protection on braids at the time the tariff of 1897 was being framed (*i. e.*, the Braid Manufacturers' Association of the United States), did so with reference to braids generally, which they defined as "*the finished product of the*

braiding machine," thus showing very clearly that they, at least, understood " braids " to be, and had in mind when they made their petition for higher duties, *a different class of goods entirely* from the merchandise in suit, to wit, articles made on braiding machines as distinguished from *loom-woven articles* or *bindings* with warp and weft threads (Tariff Hearings before the Committee on Ways and Means, 1896–7, page 1191).

A reference to the Payne Tariff Bill of 1909 (H. R., 1438), shows that as agreed to in the Senate Committee of the Whole and as it went to Conference, Paragraph 328, corresponding to Paragraph 320 of the Act of 1897, here drawn in question, provided for " bandings, beltings, *bindings*, tapes, webs or webbing, *not made on a braiding or other similar machine* * * * 45 per centum ad valorem." This provision (which would seem to show a clear legislative recognition of the fact that there were loom woven bindings like the official Exhibits, and an intent to provide for them at a lower rate as long as they were not made on a braiding machine), was dropped entirely in conference. We find instead in Paragraph 349, as the Solicitor-General states, a provision for " bindings " and " braids " and " featherstitch braids." So far from affording any indication that braids and bindings are inherently independent articles, the tariff law of 1909, viewed in the light of the history of the case, is more in consonance with a change of intent—an intent to classify hereafter at the same rate braids, whether in the nature of bindings, or otherwise, and bindings, whether loom woven, or made on the braiding machine.

Resume.

It is respectfully insisted that—

1. The main if not the only question which the Government is here seeking to have reviewed is a question of fact, namely, whether the articles in controversy are or are not bindings.

2. There is no conflict in decisions of Appellate Courts. The granting of the Government's application would result in bringing before this Court only one decision of a Circuit Court of Appeals.

3. This case is not of such gravity or general importance as to warrant this Court in reviewing the decision of the lower tribunal.

4. The Circuit Court of Appeals was right in holding that paragraph 339 covers only such braids as not elsewhere specially provided for in the Act of 1897, and that the merchandise in suit is more specifically provided for as bindings in paragraph 320.

5. The merchandise is clearly shown by the evidence to be bindings by fabrication, by the ordinary meaning of the term, by use and by trade practice; it is primarily a notion article and not a trimming article, and its logical place is in paragraph 320.

6. The prayer for the issuance of a writ of certiorari should be denied.

January, 1910.

Respectfully submitted,

ALBERT H. WASHBURN,

Counsel for Respondent.

APPENDIX.

BARUCH v. UNITED STATES.

(Circuit Court of Appeals, Second Circuit. May 25, 1909.)

No. 245 (4,419).

CUSTOMS DUTIES (§ 32) — CLASSIFICATION — "BINDINGS" — FEATHERSTITCH BRAIDS.

Braids used as bindings are specially provided for as "bindings" in Tariff Act, July 24, 1897, c. 11, § 1, Schedule I, par. 320, 30 Stat. 179 (U. S. Comp. St. 1901, p. 1661), and, though commercially known as "feather stitch braids," are therefore removed from the provision for "braids * * * not elsewhere specially provided for," in Schedule J, par. 339, 30 Stat. 181 (U. S. Comp. St. 1901, p. 1662).

[Ed. Note.—For other cases, see Customs Duties, Dec. Dig., § 32.*]

Appeal from the Circuit Court of the United States for the Southern District of New York.

For opinion below, see 159 Fed., 294.

This is an appeal taken by an importer from a decision of the Circuit Court, Southern District of New York (159 Fed. 294), affirming a decision of the Board of General Appraisers, which affirmed a decision of the collector that certain imported merchandise, consisting of various loom-woven fabrics was duitable as braids under paragraph 339 of the tariff act of 1897 (Act July 24, 1897, c. 11, § 1, Schedule J, 30 Stat., 181 [U. S. Comp. St. 1901, p. 1662]). The merchandise is of three classes, shown in Exhibits A, B, and C. The importer concedes that the broad articles, shown

in Exhibit C, were properly assessed under paragraph 339, but contends that the narrow articles, illustrated in Exhibits A and B, should have been assessed as "bindings" under paragraph 320 of said tariff act.

The two paragraphs in question follow, and, as the development of the legislation is of importance, they are shown in parallel columns with the corresponding paragraphs of the tariff acts of 1890 (Act Oct. 1, 1890, c. 1244, 26 Stat., 567), and 1894 (Act Aug. 27, 1894, c. 349, 28 Stat., 509).

Act of 1890.	Act of 1894.	Act of 1897.
354. Cotton cords, braids, boot, shoe and corset lacings, thirty-five cents per pound; cotton gimps, galloons, webbing, goring, suspenders and braces, and of the foregoing which are elastic or non-elastic, forty per centum ad valorem: Provided that none of the articles included in this paragraph shall pay a less rate of duty than forty per centum ad valorem.	263. Cords, braids, boot, shoe and corset lacings, tapes, gimps, galloons, webbing goring, suspenders and braces, woven, braided or twisted lamp or candle wicking, lining for bicycle tires, spindle binding, any of the above made of cotton or other vegetable fiber and whether composed in part of India rubber or otherwise, forty-five per centum ad valorem.	320. Bandings, beltings, bindings, bone casings, cords, garters, lining for bicycle tires, ribbons, suspenders and braces, tapes, tubing and webs or webbing, any of the foregoing articles made of cotton or other vegetable fiber, whether composed of in part of india-rubber or otherwise, and not embroidered by hand or machinery, forty-five per centum ad valorem; spindle banding, woven, braided or twisted lamp, stove or candle wicking made of cotton or other vegetable fiber, ten cents per pound and fifteen per centum ad valorem; loom harness or healds made of cotton or other vegetable fiber, or of which cotton or other vegetable fiber is the component material of chief value, fifty cents per pound and twenty-five per centum ad valorem; boot, shoe, and corset lacing made of cotton or other vegetable fiber, twenty-five cents per pound and fifteen per centum ad valorem; labels, for garments or other articles composed of cotton or other vegetable fiber, fifty cents per pound and thirty per centum ad valorem.
373. Laces, edgings, embroideries, insertings, neck rufflings, ruchings, trimmings, tuckings, lace window curtains, and other similar tamboured articles, and articles embroidered by hand or machinery embroidered and hemstitched handkerchiefs, and article made wholly or in part of lace, rufflings, tuckings, or ruching, all of the above-named articles, composed of flax, jute, cotton or other vegetable fiber or of which these substances or either of them or a mixture of any of them is the component material of chief value, not specially provided for in this act, sixty per centum ad valorem: Provided, that articles of wearing apparel, and textile fabrics, when embroidered by hand or machinery, and whether specially or otherwise provided for in this act, shall not pay a less rate of duty than that fixed by the respective paragraphs and schedules of this act upon embroideries of the materials of which they are respectively composed.	276. Laces, edgings, nettings and veilings, embroideries, insertings, neck rufflings, ruchings, trimmings, tuckings, lace window curtains, tamboured articles, and articles embroidered by hand or machinery, embroidered handkerchiefs, and articles made wholly or in part of lace, rufflings, tuckings, or ruchings, all of the above-named articles, composed of flax, jute, cotton, or other vegetable fiber, or of which these substances or either of them, or a mixture of any of them, is the component material of chief value, not specially provided for in this act, fifty per centum ad valorem.	339. Laces, lace window curtains, tidies, pillow shams, bed sets, insertings, flouncings, and other lace articles; handkerchiefs, napkins, wearing apparel, and other articles, made wholly or in part of lace, or in imitation of lace; nets or nettings, veils and veilings etamines, vitrages, neck rufflings, ruchings, tuckings, flutings, and quiltings; embroideries and all trimmings, including braids, edgings, insertings, flouncings, galloons, gorings and bands; wearing apparel, handkerchiefs, and other articles or fabrics embroidered in any manner by hand or machinery, whether with a letter monogram or otherwise; tamboured or appliqued articles, fabrics or wearing apparel; hem-stitched or tucked flouncings or skirtings, and articles made wholly or in part of rufflings, tuckings or ruchings, all of the foregoing, composed wholly or in chief value of flax, cotton, or other vegetable fiber and not elsewhere specially provided for in this act, whether composed in part of india-rubber or otherwise, sixty per centum ad valorem: Provided that no wearing apparel or other article or textile fabric, when embroidered by hand or machinery, shall pay duty at a less rate than that imposed in any schedule of this act upon any embroideries of the materials of which embroidery is composed.

Bindings appeared for the first time in the act of 1897, when they were inserted in paragraph 320. Braids at the same time were inserted in paragraph 339. In the provisions of the act of 1890 and 1894 the word "braid" appeared without words of limitation. In paragraph 339 it is followed by the restriction "not elsewhere specially provided for in this act." The articles in the paragraphs at the head of the parallel column (paragraph 354 of the act of 1890; paragraph 263 of the act of 1894, and paragraph 320 of the act of 1897) are primarily articles of utility, not inappropriately designated in the brief of the importer as "notions." The other paragraphs embrace articles which are primarily for the purpose of ornamentation.

Comstock & Washburn (Albert H. Washburn, of counsel, and J. Stuart Tompkins and George J. Puckhafer, on the brief), for importers.

J. Osgood Nichols, for the United States.

Before LACOMBE, WARD and NOYES, Circuit Judges.

NOYES, Circuit Judge (after stating the facts as above). The merchandise in question consists of narrow woven strips bearing "featherstitch" or "herringbone" ornamentation. Their practical use is to cover seams. They are inexpensive, and are largely used in making infants' clothing and underwear. The featherstitch ornamentation improves the appearance of the garment, and is added for that purpose. But the primary purpose of the article is one of utility.

This article has borne various names, such as "seam binding," "featherstitch binding," "featherstitch tape," etc.; but the name by which it has usually been called is "featherstitch braid." Indeed, while the article is not braided, but woven, we should have little difficulty in adopting the conclusion of the Circuit Court and of the Board of Appraisers that prior to 1897 it was generally commercially designated as "featherstitch braid." But this is not a case in which the finding of a commercial designation carries us far. The question is, not whether the articles are braids, but whether they are braids not elsewhere specially provided for in the act. Manifestly commercial designation can have no bearing upon the latter inquiry. It cannot be said that the phrase "braids not otherwise specially provided for"

had any commercial meaning—different from the common understanding—including this merchandise. The articles may be called "featherstitch braids"; but, if some braids are bindings, it is not inconsistent with the commercial designation to assess them under the binding paragraph.

Had this question arisen under the tariff acts of 1890 or 1894, the situation would be entirely different. As we have seen, the word "braid" was used in those acts without words of limitation or qualification. If in a case under either of those acts it had been shown that an article was commercially known as a "braid," it would have necessarily brought it within the statute. But an article is not necessarily brought within paragraph 339 by showing that it is a braid. It may be a braid without question—may have been made upon a braiding machine; but if it is more specially provided for elsewhere, it is not included. Accepting the commercial designation of these articles as featherstitch braids, we only reach the conclusion that they should be classified under paragraph 339 if they are not more specifically provided for elsewhere.

Now, the following definition of the word "binding" appears in the Standard Dictionary:

> "A braid or strip folded and sewed on the edge of any fabric, or sewed over the place where two parts are joined, so as to protect and secure the parts covered by it."

It thus appears that a binding may be a braid used or adapted to be used for a particular useful purpose. Many kinds of braid are not adapted to this use. They are employed for ornamental purposes solely. Braids of this character should be classified under paragraph 339. And, as we have seen, this classification would be especially appropriate, as that paragraph and those corresponding to it in the earlier acts have always applied particularly to articles of ornamentation. But these featherstich braids, being used for the purpose of binding seams, are, in our opinion, the kind of braids properly called bindings. And we think that it may fairly be assumed that, when Congress inserted the word "bindings" in the "notions" paragraph and transferred the

word "braid" to the "trimmings" paragraph with words of qualification, it intended to embrace in the latter paragraph only such braids as were not bindings. If the articles are bindings, as well as braids, the provision in the "notions" paragraph is the more specific. Bindings are embraced without the words of restriction or qualification. These articles as bindings are necessarily included, and they are specially provided for elsewhere than in paragraph 339.

This discussion of the case upon principle leads us to the conclusion that the merchandise should have been assessed for duty as bindings under paragraph 320; and we reach no different result from an examination of other cases, although the question of the classification of this merchandise has been before the courts several times and conflicting decisions have been rendered. In the case of *In re* Dieckerhoff (C. C.) 54 Fed., 161, it was held that these articles were dutiable as cotton braids under the section of the act of 1890 first quoted, and not as cotton trimmings under the second section quoted. This decision, however, has no special bearing upon the question now under consideration because, as we have seen, bindings were not provided for in the act of 1890. Featherstitch braids may well not be trimmings within the ornamental article paragraph of the earlier act and yet be bindings within the useful article paragraph of the act of 1897.

The government, however, insists that in view of the Dieckerhoff decision it must be presumed that, when Congress used the word "braids" in the act of 1897, it intended that it should apply to featherstitch braids. As just pointed out, however, all that that case held was that the articles were braids and not trimmings. It did not hold that they were not bindings. And Congress used the word "braid" only with words of qualification. We see no force in the contention. Aside from the Dieckerhoff decision under the act of 1890 the question here presented has been decided both ways by the Circuit Court. In Steinhart vs. United States (C. C.), 121 Fed., 442, it was held that the articles, if braids, were bindings also, and therefore dutiable under paragraph 320. This decision was followed in The Hague Case which does not appear in the "Federal Reporter." In the case of Von Baur vs. United States (C. C). 141 Fed.,

439, the question was again presented and decided the other way. The opinion of the board holding that the articles were braids under paragraph 339 was affirmed without opinion by the Circuit Court. We find the reasoning in the Steinhart decision persuasive, and, for reasons already stated, fail to find that the additional evidence requires any different conclusion.

The decision of the Circuit Court is reversed.

172 Fed. Rep., 342.

In the Supreme Court of the United States.

OCTOBER TERM, 1911.

THE UNITED STATES, PETITIONER,
v.
LEOPOLD BARUCH.
No. 190.

ON CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR THE UNITED STATES.

STATEMENT.

The articles are featherstitch braids, loom woven, of white or colored threads throughout, or of mixed white and variously colored threads, of cotton or other vegetable fiber, and ornamented with raised figures in various designs, some of which have plain and others scalloped or looped edges.

Importer's collective Exhibit A consists of braids with embroidery of herringbone stitches or other patterns; Exhibit B, of braids of approximately the the same widths as A, with scalloped or looped edges in addition to embroidery, and Exhibit C, of braids having plain, looped or lace edges, together with embroidery or openwork, or both, and some considerably wider than either A or B.

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The goods were invoiced as "Cotton featherstitch braids" and were returned by the appraiser as "Cotton braids, sixty per cent." They were accordingly classified by the collector as "braids" under paragraph 339 of the tariff act of July 24, 1897. (R., 7, 8.)

The importer protested against the assessment of duties at the rate of 60 per cent ad valorem, claiming, among other provisions, paragraph 320 of said act, imposing upon "bindings" the rate of 45 per cent ad valorem, as the proper classification. (R., 11, 12.)

The tariff provisions mentioned are as follows:

Paragraph 339:

> Laces, lace window curtains, tidies, pillow shams, bed sets, insertings, flouncings, and other lace articles; handkerchiefs, napkins, wearing apparel, and other articles made wholly or in part of lace or in imitation of lace; nets or nettings, veils and veilings, etamines, vitrages, neck rufflings, ruchings, tuckings, flutings, and quillings; embroideries and all trimmings, including braids, edgings, insertings, flouncings, galloons, gorings, and bands; wearing apparel, handkerchiefs, and other articles or fabrics embroidered in any manner by hand or machinery, whether with a letter, monogram, or otherwise; tamboured or appliquéed articles, fabrics, or wearing apparel; hemstitched or tucked flouncings or skirtings, and articles made wholly or in part of rufflings, tuckings, or ruchings; all of the foregoing, composed wholly or in chief value of flax, cotton, or other vegetable fiber, and

not elsewhere specially provided for in this act, whether composed in part of india rubber or otherwise, sixty per centum ad valorem: *Provided*, That no wearing apparel or other article or textile fabric, when embroidered by hand or machinery, shall pay duty at a less rate than that imposed in any schedule of this act upon any embroideries of the materials of which such embroidery is composed.

Paragraph 320:

Bandings, beltings, bindings, bone casings, cords, garters, lining for bicycle tires, ribbons, suspenders and braces, tapes, tubing, and webs or webbing, any of the foregoing articles made of cotton or other vegetable fiber, whether composed in part of india rubber or otherwise, and not embroidered by hand or machinery, forty-five per centum ad valorem; spindle banding, woven, braided or twisted lamp, stove, or candle wicking made of cotton or other vegetable fiber, ten cents per pound and fifteen per centum ad valorem; loom harness or healds made of cotton or other vegetable fiber, or of which cotton or other vegetable fiber is the component material of chief value, fifty cents per pound and twenty-five per centum ad valorem; boot, shoe, and corset lacings made of cotton or other vegetable fiber, twenty-five cents per pound and fifteen per centum ad valorem; labels, for garments or other articles, composed of cotton or other vegetable fiber, fifty cents per pound and thirty per centum ad valorem.

The importer abandoned his claim as to some of the goods. Its extent is indicated by the statement in the opinion of the Circuit Court (R., 189, 190) that—

> At the hearing the importers acquiesced in the board's decision in so far as it related to collective Exhibit C, and were more or less faint-hearted in their attack upon collective Exhibit B. If they can divest themselves for a moment of the influence which self-interest furnishes, they will see that the logic of the situation sweeps collective Exhibit A into the same net.

The Board of General Appraisers overruled the protest (R., 9–18), and its decision was affirmed by the Circuit Court. (R., 189, 190.)

The Circuit Court of Appeals reversed the judgment of the Circuit Court and held that, although the articles are commercially designated as "braids," they are nevertheless dutiable as "bindings." The court states that the braid paragraph is confined to braids that are "not elsewhere specially provided for," and the conclusion is then reached that since there appears "elsewhere" in the tariff act (i. e., in the provision of paragraph 320 for "bindings"), a term which is broad enough, in its dictionary meaning as defined by the Standard Dictionary, to cover these articles, the latter term should govern the classification. (R., 194–198.)

Your petitioner contends that this decision was erroneous, for the following reasons:

1. Featherstitch braids were, at the time of the passage of the tariff act of 1897, commercially known

under the name of "braids." This is not only established by the testimony, but it was found as a fact by the Board of General Appraisers and by the Circuit Court, and is admitted by the Circuit Court of Appeals. Moreover, such was the judicial decision in the litigation on that subject prior to the passage of the act in question.

2. Featherstitch braids are *not* classified by the trade as "bindings." Their trade name is "braids," not "bindings."

3. In the interpretation of tariff acts the commercial designation of an article determines its classification. It therefore is of no importance, if true, that, in its common dictionary sense, the word "bindings" may be broad enough to include these featherstitch braids. Such, however, is not the definition in the standard American dictionaries.

4. The presence of the phrase "not elsewhere specially provided for," in paragraph 399, does not alter the situation. Braids are nowhere specially provided for except in that paragraph. The tariff act has distinguished between "braids" and "bindings." They are separate commodities in the tariff sense as well as in commercial nomenclature.

ARGUMENT.

I.

The history of litigation and of legislation supports the Government's contention that these articles are dutiable as "braids."

Cases involving the dutiable classification of featherstitch braids are as follows:

In re Dieckerhoff (1893), 54 Fed., 161.

Steinhardt v. *United States*, 121 Fed., 442.

Hague v. *United States*, T. D. 25466; 134 Fed., 1022.

Vom Baur v. *United States*, 141 Fed., 439; T. D. 27397, Suit 3640.

Marshall Field & Co. v. *United States*, T. D. 29548, 30299, Suit 2015 (not elsewhere reported).

In the *Dieckerhoff case* the Circuit Court for the Southern District of New York, affirming a decision of the Board of General Appraisers, held that woven featherstitch braids, like the merchandise now in issue, were dutiable as "braids" under paragraph 354 of the tariff act of 1890, providing for "braids." Paragraph 354 of the act of 1890 corresponds in general with paragraph 320 of the act of 1897. [See appendix to this brief for this and other sections in full.]

The contention of the United States was that featherstitch braids were trimmings and were provided for in paragraph 373 of the law of 1890 (corresponding generally with par. 339 of the 1897 act). This was a collector's appeal from the decision of the

board, and upon the testimony of "four representative importers and large dealers in this city (New York)" commercial designation of featherstitch braids "as braids" was upheld.

The Treasury Department, on the advice of the Attorney General, acquiesced in this decision, and extended it to contested importations of featherstitch braids which had been classified as trimmings under the tariff act of 1883. (T. D. 13653, 14124.)

From that time continuously up to the present it has been the uniform practice of the Treasury Department to classify these featherstitch braids as braids. That practice was being constantly pursued at the time of the drafting and enactment of the law of 1897, under which the importations in the case at bar were made.

By familiar rules, therefore, the presumption arises that Congress in 1897 used the word "braids" to designate the same things as in the 1890 act.

In *Steinhardt* v. *United States* (1903) the Circuit Court for the Southern District of New York reversed a decision of the Board of General Appraisers, and held that "narrow woven tapes of cotton, used largely for covering the seams of underwear and waists," were dutiable as bindings or tapes at 45 per cent ad valorem under paragraph 320 of the tariff act of 1897, and not as braids dutiable at 60 per cent ad valorem under paragraph 339.

The court reversed the board's decision on the strength of the definition in the Standard Dictionary that a braid is "a narrow, flat tape or woven strip

for binding the edges of fabrics, or for ornamenting them."

The court in its opinion did not doubt that the articles were the "braids" of paragraph 339 of the act of 1897, but held that under the Standard Dictionary definition they were also "bindings," and hence were "otherwise specially provided for" in paragraph 320. This is, to say the least, amazing logic; it involves the assumption that the clause "not otherwise specially provided for" was mandatory on the court to put no merchandise under paragraph 339, unless on no theory could it be classified elsewhere.

Hague v. *United States* involved the same sort of merchandise, and reached the Court of Appeals for the Second Circuit in 1904, where the appeal was dismissed on the authority of the *Steinhardt case.*

In *Vom Baur* v. *United States* (1905), the Circuit Court for the Southern District of New York, affirming a decision of the Board of General Appraisers, held that featherstitch braids, like those now in issue, produced by a process of weaving and not of braiding, and commercially known as "braids," were dutiable as "braids" under paragraph 339, tariff act of 1897, and not as "bindings" or "tapes" under paragraph 320 of said act. The opinion of the board was full and exact and was adopted by the court as its judgment.

An appeal taken by the importer to the Circuit Court of Appeals was dismissed at the instance of the appellant.

The case was tried after the Treasury Department (T. D. 24269) had limited its acquiescence in the doc-

trine of the Steinhardt case to the very merchandise; and the record included very full evidence of commercial designation; no doubt existed on either side that featherstitch braids were commercially known as "braids"; and the importer was relegated to the argument that while they were braids they were also bindings, and therefore were taken out of paragraph 339. The weakness of that contention, however, is that the proof in the case is all the other way.

In *Marshall Field & Co.* v. *United States,* the Circuit Court for the Northern District of Illinois affirmed a decision of the Board of General Appraisers that featherstitch braids are dutiable at 60 per cent ad valorem under paragraph 339 of the tariff act of 1897.

An appeal to the Circuit Court of Appeals was dismissed, at the request of the importer, after the decision of the Circuit Court of Appeals in the present case.

Hence it is seen that until the decision in the *Dieckerhoff case,* in 1893, articles of the kind in suit, made in the same way and similarly ornamented with herringbone and other patterns, were classified as trimmings at a higher rate of duty than was imposed on braids. In that case, on an importer's protest, it was held that they were commercially known as "braids" and were dutiable accordingly under the tariff act of 1890.

That classification was acquiesced in by the Treasury Department and thereafter followed. Change of tariff made it unfavorable to importers, and it was

successfully challenged by them in the *Steinhardt case*. The Treasury Department, however, continued to classify the articles as braids, with a view of bringing the question again before the courts (T. D. 24269) upon proof of commercial designation, lacking in the Steinhardt case. The matter was fully presented, both on behalf of the importers and of the Government, in *Vom Baur* v. *United States*. Classification as braids was there held to be correct. Then came this case and the *Field case*, the former following the Steinhardt case and the latter the *Vom Baur case*. All of these cases arose under the tariff act of 1897.

In the tariff act of 1909 bindings were put in the same paragraph—349—with braids, and both made dutiable at 60 per cent ad valorem, the rate imposed on braids in the act of 1897. This shows beyond a doubt that for tariff purposes braids and bindings are independent enumerations and stand for different articles; and answers fully the argument which is advanced, that the braids of paragraph 339, act of 1897, are specially provided for as "bindings" in paragraph 320 of that act and are therefore dutiable there.

Analogous conditions make pertinent the reasoning of this court in *Komada* v. *United States* (215 U. S., 392, 396–398). In that case Mr. Justice Brewer, speaking for the court, said:

> Thus it appears that prior to 1894 sake was classified by similitude to distilled liquor, and then on a protest by an importer it was classified by similitude to still wine, and that ruling

has been followed from that time to the present, receiving in the meantime at least a qualified approval by Congress. It was accepted without challenge until 1902. Then, a protest against it having been overruled, it remained unchallenged for another year. After this, and in the latest tariff act, Congress has in terms put sake in the category with still wines.

Under these circumstances we think the intent of Congress in respect to the classification of sake is clearly manifested, and the judgment of the Court of Appeals is affirmed.

Long-continued executive practice and implied adoption thereof by Congress were considerations in that case, as in this. Among the cases therein cited is *United States* v. *Cerecedo* (209 U. S., 337, 339). in the decision of which Mr. Justice (now Chief Justice) White and Mr. Justice Peckham concurred solely because of such practice.

II.

It has long been a settled rule of interpretation that if words used in a statute imposing duties on imports had at the time of its passage a well-known signification in our trade and commerce, differing from their ordinary meaning, the commercial designation must prevail, unless Congress has clearly manifested a contrary intention; and it is only when no commercial usage is called for or proved that the common meaning is to be adopted.

This is a long-established rule of first rank and controlling effect in the construction of tariff laws. One of the earliest cases is *United States* v. *Two*

Hundred Chests of Tea (9 Wheat., 430, 438, 439). The question there was whether certain tea imported in 1819 was bohea, as entered. Mr. Justice Story, delivering the opinion of the court, said:

> The object of the duty laws is to raise revenue, and for this purpose to class substances according to the general usage and known denominations of trade. Whether a particular article were designated by one name or another, in the country of its origin, or whether it were a simple or mixed substance, was of no importance in the view of the legislature. It did not suppose our merchants to be naturalists, or geologists, or botanists. It applied its attention to the description of articles, as they derived their appellations in our own markets, in our domestic as well as our foreign traffic. And it would have been as dangerous as useless to attempt any other classification than that derived from the actual business of human life. Bohea tea, then, in the sense of all our revenue laws, means that article which, in the known usage of trade, has acquired that distinctive appellation.

In 1845, Mr. Chief Justice Taney declared that the principle had become so firmly established that the question could no longer be considered open. (*Curtis* v. *Martin*, 3 How., 105, 109, 110.)

He said:

> The question brought up by this exception can not now be considered as an open one. In the case of the *United States* v. *200 Chests of Tea*, 9 Wheat., 438, the court decided that in im-

> posing duties Congress must be understood as describing the article upon which the duty is imposed according to the commercial understanding of the terms used in the law, in our own markets. This doctrine was reaffirmed in the case of the *United States* v. *112 Casks of Sugar*, 8 Pet., 277, and again in 10 Id., 151, in the case of *Elliott* v. *Swartwout*. It follows that the duty upon cotton bagging must be considered as imposed upon those articles only which were known and understood as such in the commerce in the year 1832, when the law was passed imposing the duty.

Cases reaffirming this doctrine and applying it to various tariff provisions are as follows:

Arthur v. *Morrison* (96 U. S., 108, 111, 112):

In this case the earlier decisions were reviewed and veils manufactured of silk, commercially known as crêpe veils, were held not dutiable as silk veils but as manufactures of silk. The court adverted to the act of 1875 (*infra*), expressly excepting the rule of commercial designation, as showing that in the absence of such clear expression of legislative intent the rule must prevail.

Arthur v. *Butterfield* (125 U. S., 70, 75):

The question was whether certain goat-hair goods were known in commerce under the name of "women's and children's dress goods." Mr. Justice Field said:

> The finding of the jury is conclusive that they were not known in commerce, among merchants and importers, as women's and children's dress goods. It is well settled that

> a designation of an article of commerce by merchants and importers, when clearly established, determines the construction of a revenue law when that article is mentioned. It was so held in *Arthur* v. *Morrison* (96 U. S., 108), and in many other cases, which are cited in the opinion of the court in that case. In *Elliott* v. *Swartwout* (10 Pet., 137, 151), the court said that "laws imposing duties on importations of goods are intended for practical use and application by men engaged in commerce; and hence it has become a settled rule in the interpretation of statutes of this description to construe the language adopted by the legislature, and particularly in the denomination of articles, according to the commercial understanding of the terms used. This rule is fully recognized and established by this court in the case of *Two Hundred Chests of Tea*, reported in 9 Wheat., 438.

Robertson v. *Salomon* (130 U. S., 412, 415):

The question was whether white beans were dutiable as vegetables or free as seeds not otherwise provided for under the tariff act of 1883. The court said:

> The commercial designation, as we have frequently decided, is the first and most important designation to be ascertained in settling the meaning and application of the tariff laws. (See *Arthur* v. *Lahey*, 96 U. S., 112, 118; *Barber* v. *Schell*, 107 U. S., 617, 623; *Worthington* v. *Abbott*, 124 U. S., 434, 436; *Arthur's Executors* v. *Butterfield*, 125 U. S., 70, 75.)

This decision was approved in *Sonn* v. *Magone* (159 U. S., 417, 422), in which substantially the same issue was presented.

American Net & Twine Co. v. *Worthington* (141 U. S., 468, 471, 472):

Linen thread, differing not in material, quality, or mode of manufacture from other similar thread, but intended to be used in the manufacture of gill-nets, was held dutiable as gilling twine under the tariff act of 1883 because commercially known as such. Mr. Justice Brown said:

> It is a cardinal rule of this court that, in fixing the classification of goods for the payment of duties, the name or designation of the goods is to be understood in its known commercial sense, and that their denomination in the market when the law was passed will control their classification without regard to their scientific designation, the material of which they may be made or the use to which they may be applied. (*Two Hundred Chests of Tea*, 9 Wheat., 430, 438; *United States* v. *One Hundred and Twelve Casks of Sugar*, 8 Pet., 277; *Elliott* v. *Swartwout*, 10 Pet., 137; *Curtis* v. *Martin*, 3 How., 106; *Arthur* v. *Morrison*, 96 U. S., 108; *Swan* v. *Arthur*, 103 U. S., 597; *Schmieder* v. *Barney*, 113 U. S., 645; *Arthur* v. *Butterfield*, 125 U. S., 70; *Robertson* v. *Salomon*, 130 U. S., 412.)

Hedden v. *Richards* (149 U. S. 346, 348, 349).

The question was whether certain furniture was dutiable as "furniture finished" under the tariff act of 1883. The collector of customs offered testimony

to show that in the furniture trade the word "finished" had a particular trade meaning, and the court below refused to permit the application of such meaning, if it should be found to exist, to the words as used in the act. Mr. Justice Shiras said:

> The question is, therefore, whether, if a term used in a tariff law has a general meaning, as understood by society at large, and also a special trade signification, it is to be presumed that Congress used the word in its general sense, or in its trade sense.
>
> With regard to the language of commerce, the general rule laid down by this court is that it must be construed, when used in laws imposing duties on importations of goods, and particularly when employed in the denomination of articles, according to the commercial understanding of the terms used. (*United States* v. *One Hundred and Twelve Casks of Sugar*, 8 Pet. 277; *Elliott* v. *Swartwout*, 10 Pet. 137.)

Cadwalader v. *Zeh* (151 U. S. 171, 176):

The question there was whether certain small earthenware cups, saucers, and plates, having on them letters of the alphabet and figures of animals and the like, were dutiable as earthenware or as toys under the tariff act of 1883. Mr. Justice Gray said:

> It has long been a settled rule of interpretation of the statutes imposing duties on imports that if words used therein to designate particular kinds or classes of goods have a well-known signification in our trade and commerce, different from their ordinary meaning

> among the people, the commercial meaning is to prevail unless Congress has clearly manifested a contrary intention; and that it is only when no commercial meaning is called for or proved that the common meaning of the words is to be adopted. (*United States* v. *Chests of Tea*, 9 Wheat., 430, 438; *Tyng* v. *Grinnell*, 92 U. S., 467; *Arthur* v. *Butterfield*, 125 U. S., 70; *Robertson* v. *Salomon*, 130 U. S., 412, 415; *American Net & Twine Co.* v. *Worthington*, 141 U. S., 468; *Toplitz* v. *Hedden*, 146 U. S., 252; *Nix* v. *Hedden*, 149 U. S., 304.) Among the words to which this rule has been applied are "refined sugar" (*Barlow* v. *United States*, 7 Pet., 404), "sugar" and "sirup" (*United States* v. *Casks of Sugar*, 8 Pet., 277), "wool" and "worsted" (*Elliott* v. *Swartwout*, 10 Pet., 137), "cotton bagging" (*Curtis* v. *Martin*, 3 How., 106), "silk veils" (*Arthur* v. *Morrison*, 96 U. S., 108), "bar iron" (*Worthington* v. *Abbott*, 124 U. S., 434), "furniture finished" (*Hedden* v. *Richards*, 149 U. S., 346).

De Jonge v. *Magone* (159 U. S., 562, 569):

Papers coated, colored, and embossed to imitate leather, and papers coated with flock to imitate velvet, were classified as paper under the tariff act of 1883. The importers excepted to the charge of the court, "Was this article, in the trade and commerce of this country, when Congress legislated in 1883, a variety of paper?" Mr. Justice (now Chief Justice) White said:

> It follows from what has been stated that the court rightly refused the charges requested by plaintiffs in error. It equally follows that if

> the word "paper" had a well-known signification in trade and commerce in 1883, which embraced these products, that meaning would control. (*Cadwalader* v. *Zeh*, 151 U. S., 171, p. 176.) This principle clearly authorized the court to submit to the jury the question: "Was this article, in the trade and commerce of this country, when Congress legislated in 1883, a variety of paper?" and to instruct them, in the event they answered the question in the affirmative, to find in favor of the collector.

Goat and Sheepskin Import Company v. *United States* (206 U. S., 194, 202, 203):

The question was whether the word "wool," as used in the tariff act of 1897, included a substance which, while the growth upon a sheepskin, was, nevertheless, commercially known as "mocha hair." Mr. Justice Peckham said:

> It is not denied that the commercial designation of an article, which designation was known at the time of the passage of a tariff act, is the name by which the article should be classified for the payment of duty, and, as is stated, "without regard to their scientific designation and material of which they may be made or the use to which they may be applied." (*Two Hundred Chests of Tea*, 9 Wheat., 430, 438; *Arthur* v. *Morrison*, 96 U. S., 108; *American Net and Twine Co.* v. *Worthington*, 141 U. S., 468; *Hedden* v. *Richard*, 149 U. S., 346, 348.) As was said by Mr. Justice Story in *Two Hundred Chests of Tea*, *supra*, Congress did not "suppose our merchants to be natural-

ists or geologists or botanists. It applied its attention to the description of articles as they derived their appellations in our own markets, in our domestic as well as our foreign traffic." And in *Hedden* v. *Richard, supra*, it was said: "The language of commerce * * * must be construed, * * * particularly when employed in the denomination of articles, according to the commercial understanding of the terms used." The commercial designation should prevail, unless Congress has clearly manifested a contrary intention. (*Cadwalader* v. *Zeh*, 151 U. S., 171, 176.)

III.

A legislative intention to take the braids in suit out of the operation of the principle that commercial designation controls classification is not clearly manifested; therefore the principle must apply.

A clear expression of legislative intention to make merchandise dutiable without regard to the principle of commercial designation is found in the first section of the tariff act of 1875 (18 Stat., 307, c. 36), which subjected to a duty of 60 per cent "all goods, wares, and merchandise not otherwise herein provided for, made of silk, or of which silk is the component material of chief value, irrespective of the classification thereof for duty by or under previous laws or of their commercial designation." This exceptional legislation was considered in *Arthur* v. *Morrison* (*supra*), where the cases enunciating the doctrine of classification according to commercial designation were reviewed and applied under the tariff act of 1864 to

silk veils commercially known as "crêpe veils." Mr Justice Hunt said, at pages 111 and 112:

> That Congress intended duties under the act of 1864 to be imposed according to their commercial designation, and that it understood this to be the rule of construing statutes, is also manifest from the first section of the act of February 8, 1875 (18 Stat., 307), upon the subject we are considering.
>
> A duty of 60 per cent is there imposed "on all goods, wares, and merchandise, not herein otherwise provided for, made of silk, or of which silk is the component material of chief value, irrespective of the classification thereof for duty by or under previous laws, or of their commercial designation." It was, no doubt, within the power of Congress to abolish a well-known rule of construction, as it did in the act of 1875; but, until so abolished, it remained in force.

This well-known rule of construction was not "abolished" in the act of 1897. Paraphrasing the language in the Morrison case, "not being so abolished, it remains in force."

There is nothing in the tariff act of 1897 taking any articles commercially known as "braids" out of paragraph 339 and relegating them to paragraph 320 under the name of "bindings." The words of limitation in paragraph 339 do not effect this. The limitations are expressed in the following clause:

> * * *; all of the foregoing, composed wholly or in chief value of flax, cotton, or other vegetable fiber, and not elsewhere specially provided for in this act, whether composed in part of india rubber or otherwise, * * *.

The two phrases "composed wholly or in chief value of flax, cotton, or other vegetable fiber," and "not elsewhere specially provided for in this act," will be considered separately.

1. The phrase "composed wholly or in chief value of flax, cotton, or other vegetable fiber" does not change "braids" from a denominative to a descriptive term, nor serve to take out of paragraph 339 articles commercially known as "braids."

The requirement that the articles covered by paragraph 339 shall be composed of flax, cotton, or other vegetable fiber, does not make "braids" a descriptive rather than a denominative term. The provision is a common form of *eo nomine* enumeration in the several schedules of tariff acts. There is no question as to the component material. It is admittedly vegetable fiber. The only question is, Are the articles "braids"? The word is clearly no less denominative than "bohea tea," "cotton bagging," "silk veils," "gilling twine," "furniture finished," "women's and children's dress goods," and other terms to which the rule of commercial designation was applied by this court in cases *supra*.

But regarded as a descriptive term, the rule as to commercial designation still would apply. It has been repeatedly held that a descriptive term may have a commercial meaning which differs from the ordinary meaning, and that the former must govern.

Arthur v. *Cumming*, 91 U. S., 362, 363.
Pickhardt v. *Merritt*, 132 U. S., 252, 255–257.
Bogle v. *Magone*, 152 U. S., 623, 627.
Cadwalader v. *Zeh*, *supra*.
United States v. *Nordlinger*, 121 Fed., 690, 692, C. C. A.

In *Arthur* v. *Cumming* the clause of the tariff act of 1872, interpreted, was:

> On all burlaps and like manufactures of flax, jute, or hemp, * * *, except such as may be suitable for bagging for cotton, * * *

Mr. Justice Swayne, speaking for the court, said:

> The rule to be followed in the construction of revenue statutes in cases like this is well settled in this court. It is that descriptive terms applied to articles of commerce shall be understood according to the acceptation given to them by commercial men in our own ports at the time of the passage of the act in which they are found.

The terms interpreted in *Pickhardt* v. *Merritt* were "aniline dyes" in the tariff act of 1864 and "aniline dyes and colors by whatever name known" in the tariff act of 1870. The importer insisted that the court erred in admitting evidence to show the signification of the words "aniline dyes and colors" as a commercial term in contradistinction to a descriptive term and in refusing to charge the jury "that the term 'aniline dyes and colors by whatever name known' is not used in a general commercial sense, but as a descriptive term and primarily includes only such dyes as are in fact aniline by their constitution."

This court declared these objections untenable and that the jury was properly instructed that if the articles in question according to commercial under-

standing were included in the class of articles known as aniline dyes they were subject to duty as such.

In *Bogle* v. *Magone* the Circuit Court was adjudged in error in excluding the test of evidence as to whether the term "sauces of all kinds" in the tariff of 1883 had a restrictive trade meaning and was not a descriptive term of ordinary use to be taken in its ordinary meaning. It was said (p. 627):

> The Circuit Court, in directing a verdict for the defendant, ruled, in substance, that as matter of law and without regard to commercial usage these articles came within the words "sauces of all kinds" in the tariff act. We are unable to concur in that view, or to say, either of our judicial knowledge or in view of the evidence introduced, that these articles are necessarily "sauces" of any kind; still less, that this is so clear as to exclude the usual test of commercial designation. (*Cadwalader* v. *Zeh*, 151 U. S., 171, 176.)

Cases cited on behalf of the collector in *Cadwalader* v. *Zeh* (*supra*) were examined and found to have no "tendency to shake this rule." All were declared to depend on special provisions of the statutes. The one most nearly in point here is *Barber* v. *Schell* (107 U. S., 617, 621).

That case involved the question whether the tariff act of 1857 changed the rate of duty imposed in the tariff act of 1846 on certain cotton goods. The latter act contained a provision for "cotton laces, cotton insertings, cotton trimming laces, cotton laces and braids," and for "manufactures composed wholly of

cotton, not otherwise provided for." The act of 1857 provided that "all manufactures composed wholly of cotton, which are bleached, printed, painted, or dyed, and delaines," should be subject to a rate of duty lower than that imposed in the act of 1846.

The importer contended that as cotton laces and cotton insertings were made dutiable by those names in the act of 1846, they were not affected by the subsequent general provision for manufactures composed wholly of cotton. This court, however, said that "cotton" before "laces, etc.," was used as a descriptive word to indicate manufactures composed wholly of cotton, which were clearly comprehended by the provision in the act of 1857 for "all manufactures composed wholly of cotton." As was there said, no question of commercial designation arose in that case.

The court said in *Cadwalader* v. *Zeh*, at page 178:

> In *Barber* v. *Schell* (107 U. S., 617, 621) the words held not to be affected by commercial usage were "all manufactures composed wholly of cotton, which are bleached, printed, painted or dyed." (Act of Mar. 3, 1857, c. 98, sec. 2; 11 Stat., 193.) That designation, as observed by Mr. Justice Blatchford, speaking for this court, and following the decision of Mr. Justice Nelson in *Reimer* v. *Schell* (4 Blatch., 328), was a designation of articles by special description of quality or material, as contradistinguished from designation by a commercial name.

A later case construing a provision like "all manufactures composed wholly of cotton" in *Barber* v.

Schell (*supra*), is *United States* v. *Klumpp* (169 U. S., 209, 212, 216). The provision there in issue was paragraph 297 of the tariff act of 1894 reducing the duties on "manufactures of wool," which was held to embrace worsted, a form of wool, as well as woolen goods. As Mr. Chief Justice Fuller said, "worsted goods are made out of wool, and are necessarily a manufacture of wool." The only question was, Is worsted wool?

In *Seeberger* v. *Cahn* (137 U. S., 95, 98), therein cited, this court said of cloths *popularly* known as "diagonals" and *denominated in trade* "worsteds":

> It being distinctly found, as matter of fact, that the goods in question are called or known in the trade as "worsteds," and are composed mainly of worsted, but mixed with a small proportion of shoddy and of cotton, the Circuit Court rightly held that they were subject to duty as manufactures of worsted, and not as manufactures of wool.

A case accentuating the distinction between a provision imposing duty upon an article by specific designation, such as "braids," which obviously involves the test of commercial usage, and words of special description making the mere existence of particular conditions or facts the basis of classification, is *Patton* v. *United States* (159 U. S., 500, 510).

Mr. Justice Brown there said:

> The act does not impose a duty on scoured wool as such by its commercial designation, but provides that "the duty on wools * * * which shall be imported washed, shall be twice

> the amount of duty to which they would be subject if imported unwashed; and the duty on wools of all classes which shall be imported scoured shall be three times the duty to which they would be subjected if imported unwashed." In short, the act refers not to the commercial designation but to the fact whether the wool has been actually scoured or washed, or is imported unwashed. If the wools have in fact undergone the process of scouring, they are properly classified as imported scoured, although they may not be known commercially as scoured wools.

A provision like paragraph 339 of the tariff act of 1897 was construed and declared to be a specific enumeration subject to the rule of commercial designation in *Arthur* v. *Davies* (96 U. S., 135, 136). In that case, braces or suspenders of rubber, cotton, and silk, cotton chief value, were held dutiable under section 22 of the tariff act of 1861, which read:

> Braces, suspenders, webbing, or other fabrics, composed wholly or in part of india rubber, not otherwise provided for—

And not as "manufactures of india rubber, silk, and other materials." Mr. Justice Hunt said:

> It thus appears that for 30 years prior to this importation, and in four different statutes, braces and suspenders, composed wholly or in part of india rubber, had been a subject of duty, *eo nomine;* and in the same statute where a duty of 50 per cent is imposed on other manufactures of which rubber is a component material, which it is now sought to apply to

braces and suspenders, braces and suspenders containing that material are, by name, charged with an additional duty of 5 per cent.

It is not material that in one kind of suspenders cotton was the component of chief value, and that each contained some proportion of silk. If they are technically and commercially braces and suspenders composed in part of india rubber, they take their dutiable character from that source, * * *.

The rule that commercial designation controls classification is not rendered inapplicable by the phrase "not elsewhere specially provided for" in paragraph 339, tariff act of 1897, and its absence from paragraph 320 of said act.

It does not follow from the use of the phrase "not elsewhere specially provided for" in paragraph 339 of the tariff act of 1897, that some *braids* are elsewhere specially provided for. Application of the phrase to the enumerations *eo nomine*, such as "braids," is unnecessary to give it effect. The phrase may be applied to the general provisions in the paragraph, such as "articles or fabrics embroidered in any manner * * * tamboured or appliquéed articles, fabrics or wearing apparel; hemstitched or tucked flouncing or skirtings, and articles made wholly or in part of rufflings, tuckings, or ruchings." The fact that the words of limitation are applicable to *some* of the articles named in that paragraph does not require a search to be made elsewhere in the act for more specific designation of articles provided for *eo nomine*.

The phrase, furthermore, was not inserted in the law concurrently with the transfer of the provision

for braids from one paragraph to another. It was already in the latter and not in the former. No change whatever was made in that regard. The word "braids" was simply put in a different setting which happened to have the words "not elsewhere specially provided for," while the old one did not.

But irrespective of that, commercial designation fixes the dutiable character of the articles notwithstanding the phrase "not elsewhere specially provided for." This court so held in *Arthur* v. *Lahey* (96 U. S., 112, 118). In summing up the conclusions there reached, the court said:

> 1. The commercial designation of an article among traders and importers, when clearly established, fixes its character for the purpose of the tariff laws.
>
> 2. When Congress has designated an article by its specific name, and imposed a duty upon it by such name, general terms in a subsequent act or in a later part of the same act, although sufficiently broad to comprehend such article, are not applicable to it.
>
> 3. That the expression "not otherwise provided for" in the eighth section of the act of 1864 does not deprive these rules of their ordinary application.

See also *United States* v. *Schwarz* (140 Fed., 302); *Thomas* v. *Schwarz* (140 Fed., 989).

The principle adopted by the Court of Appeals is, it is respectfully insisted, in direct conflict with the rule here stated. The evidence shows, and the Board of General Appraisers, the Circuit Court, and

also the Court of Appeals have all found that the merchandise in question is "featherstitch braid;" and "braid" is specifically provided for by name in paragraph 339 of the tariff act of 1897. On the other hand, "braid" is not mentioned in paragraph 320 of that act, but the Court of Appeals found, by referring to one dictionary, that the word "binding" might include a form of braid, and hence held that it was "specially provided for" there. It is difficult to perceive how it was there "specially provided for," when it had to be spelled into the provision for "bindings" by the use of a dictionary. The word "specially," as here used, must mean something more definite than as held by the court. If such a rule should be applied generally to tariff provisions, it would render almost impossible efficient administration of the law, and the designation of an article by name in a paragraph with such words of limitation would mean practically nothing, as one would have to take his dictionary in hand and turn to the other paragraphs to ascertain whether there might not be a word elsewhere which would embrace it.

That the adoption of such a rule of interpretation would be unfortunate is shown by the fact that the result would sometimes depend upon what dictionary might be consulted by the court. This is well illustrated by the present case: The Court of Appeals relies upon the Standard Dictionary definition of "binding" as a "braid" which secures the edge of cloth from raveling, whereas the definition given by Webster, Worcester, and the Century Dictionaries

(*infra*) is "something" that secures the edge of cloth from raveling, and the word "braid" is not used at all.

The acceptance of a definition in one standard dictionary to the exclusion of others is decisively disapproved in *Koechl* v. *United States* (84 Fed. 448, C. C. A.). Lacombe, C. J., referring to the definition of "vaccine" in the Century Dictionary, said:

> The quotation expresses merely the opinion of the compiler or compilers of the dictionary, and it would certainly require more than the mere ipse dixit of a contributor to such a work to satisfy us that the words "vaccine virus" are actually used with such meaning by educated people; especially in view of the fact that none of the other standard dictionaries—Webster, Worcester, Funk and Wagnalls, etc.—give any such definition of the phrase.

IV.

The articles are not bindings as well as braids, in trade, ordinary, or tariff meaning, and, therefore, are dutiable at 60 per cent ad valorem under paragraph 339, as held by the Board of General Appraisers and the Circuit Court, and not at 45 per cent ad valorem under paragraph 320, as held by the Circuit Court of Appeals.

The action of the collector is presumptively correct. The burden is upon the protesting importers to establish their contention.

Arthur v. *Unkart*, 96 U. S., 118, 122.
Earnshaw v. *Cadwalader*, 145 U. S., 247, 262.
Erhardt v. *Schroeder*, 155 U. S., 124, 130.
United States v. *Ranlett*, 172 U. S., 133, 146.

The collector classified the articles as braids. The importer claims that they are bindings. The collector's classification must stand unless the importer establishes that the articles are bindings and not braids for tariff purposes.

There is evidence that such articles are sold in the braid or trimming department of some establishments (R. 66, 70, 71), although that is not a determinative factor. The matter in issue is not the name of the counter of a retail store where the article is sold, but the name of the article itself as bought and sold at wholesale. Whether sold with trimmings, or with other braids, or with plain, unornamented articles, such as tapes or bindings, is unimportant, if the articles be designated in the wholesale trade as braids.

It is also immaterial how the braids were manufactured, whether woven on a loom or made on a braiding machine. The primary and controlling question is not the name of the machine making the goods, nor the particular method of fabrication, but the commercial designation of the *product when imported*. The law concerns the imported article only and the *eo nomine* provision includes everything known by that name. This is the recognized construction and practice of the Treasury Department for more than a quarter of a century (T. D. 6733, 9415), and is in complete harmony with the decisions of this and of other courts, including the Circuit Court of Appeals in this case, that the mode of manufacture will not avail in determining dutiable classification as against a commercial usage.

Representative cases in this court are:

Merritt v. *Welsh*, 104 U. S., 694, 701, 705.

Chew Hing Lung v. *Wise*, 176 U. S., 156, 160–162.

Merritt v. *Welsh* involved the method of manufacture of sugar. Mr. Justice Bradley, delivering the opinion of the court, said:

> Great stress is laid on the charge that sugars are manufactured in dark colors on purpose to evade our duties. Suppose this is true; has not a manufacturer a right to make his goods as he pleases? If they are less marketable it is his loss; if they are not less marketable who has a right to complain? If the duties are affected, there is a plain remedy. Congress can always adopt such laws and regulations as it may deem expedient for protecting the interests of the Government.
>
> * * * * *
>
> The argument that the sugars in question are not "sugars" in the sense of the law, because the standard adopted by the law for fixing the grade is, as to the sugars in question, defective in its application, is too metaphysical to be of weight in the consideration of the question. They are sugars of commerce, and the complaint of the customhouse is that they are better sugars than they appear to be.

In *Chew Hing Lung* v. *Wise* (*supra*), tapioca flour, one of three forms of tapioca known to commerce, was held not dutiable under the Tariff Act of 1890 as starch, but free of duty as tapioca because commercially so known. Mr. Justice Peckham said:

> Being in truth tapioca, and commercially known as such, it does not come under the description of starch, although in great part composed of that substance. The commercial designation of an article is the first and most important thing to be ascertained, and governs in the construction of the tariff law when that article is mentioned, unless there is something else in the law which restrains the operation of this rule. (*Arthur* v. *Morrison*, 96 U. S., 108; *Arthur* v. *Lahey*, 96 U. S., 112; *Arthur* v. *Rheims*, Id., 143; *Robertson* v. *Salomon*, 130 U. S., 412; *Bogle* v. *Magone*, 152 U. S., 623.)

The mode of fabrication of braids and of similar merchandise was directly in issue in *In re Dieckerhoff* and *Vom Baur* v. *United States* (*supra*), and in the following cases:

> *United States* v. *Field*, 50 Fed. 908, C. C.; 54 Fed. 367, C. C. A.
>
> *United States* v. *Wright*, T. D. 13707 and 13974 (not elsewhere reported).
>
> *Wolff* v. *United States*, 116 Fed. 1023.

In re Dieckerhoff and *Vom Baur* v. *United States* are sustained by the Webster, Century, and Standard definitions of "braid" as including woven products.

In *United States* v. *Field* silk goods which, although made on lace machines and having the substantial characteristics of lace, were not commercially known as laces, but as "silk nets," "veilings," and "drapery nets," were held dutiable under the tariff act of 1890 as manufactures of silk and not as silk laces.

In *United States* v. *Wright* and in *Wolff* v. *United States* cotton tapes made on braiding machines but not commercially known as braids, were held not dutiable as braids.

These cases are in accord with the decision of this court in *Goat and Sheepskin Import Co.* v. *United States* (*supra*), in which it was held that the hair of Mocha sheep, not being commercially known as wool, should not be classified as wool simply because it grows on a sheep.

There can be no doubt that commercial designation as featherstitch braids is established for the merchandise in the case at bar. The testimony clearly shows it (R., 21, 24, 32, 34, 41, 62, 64, 69, 70, 73, 74, 79, 81, 84–86, 98, 165, 166, 174, 185, 188); the Board of General Appraisers and the Circuit Court so found and held, and the Circuit Court of Appeals admits it, but nevertheless classified them as bindings.

The record includes the evidence in the Vom Baur (R., 94–176) and Steinhardt (R., 95, 176–188) cases and part of the Dieckerhoff (R., 155–160). No additional evidence was taken before the board, which quoted and adopted its opinion in the Vom Baur case, wherein the testimony was reviewed and the following finding of facts made (R., 17):

On this record we find as matter of fact—

> 1. That the goods in question were generally known in the wholesale trade of the United States at and prior to July 24, 1897, as "featherstitch braids."

2. That the term "featherstitch braids" was the only general commercial name under which the goods were known in the trade and commerce of this country at and immediately prior to July 24, 1897, and that the terms "seam bindings," "finishing tapes," and others are subordinate names which have not been generally employed to designate these goods.

In view of these findings, we think the case is distinguished from the *Steinhardt case* (*supra*). That case only decided that if the articles were braids within the lexicographical definitions they were also bindings or tapes, and were therefore more specifically provided for in paragraph 320. There was no satisfactory testimony in the case as to the commercial designation of the articles, whereas it has now been shown by competent testimony that they are generally known in the commerce of this country as "braids" and not as "tapes" or "bindings."

Voluminous testimony was taken in the Circuit Court, which said in part (R., 189):

> The board found that these goods were known generally in the trade as featherstitch braids prior to 1897. The further testimony taken in court does not tend to weaken that conclusion; in truth, it serves to strengthen it.

The Circuit Court of Appeals said in part (R., 197):

> This article has borne various names, such as "seam binding," "featherstitch binding," "featherstitch tape," etc., but the name by which it has usually been called is "featherstitch braid." Indeed, while the article is

> not braided but woven, we should have little difficulty in adopting the conclusion of the Circuit Court and of the Board of Appraisers that prior to 1897 it was generally commercially designated as "featherstitch braid."

This concurrence of the Appellate Court in the finding of the board and of the Circuit Court is conclusive of the fact that the articles are commercially known as braid; it is a settled doctrine of this court that the concurring decisions of two courts upon a question of fact will be followed unless wholly unwarranted. A conflict in the testimony is insufficient ground for disturbing such finding.

> *Dravo* v. *Fabel*, 132 U. S., 487, 490.
> *Stuart* v. *Hayden*, 169 U. S., 1, 14.
> *Baker* v. *Cummings*, 169 U. S., 189, 198.
> *Beyer* v. *LeFevre*, 186 U. S., 114, 119.
> *The Carib Prince*, 170 U. S., 655, 658.
> *Shappirio* v. *Goldberg*, 192 U. S., 232, 240.
> *The Iroquois*, 194 U. S., 240, 247.
> *Hy-Yu-Tse-Mil-Kin* v. *Smith*, 194 U. S., 401, 412.
> *United States* v. *Clark*, 200 U. S., 601, 608.

In *Beyer* v. *LeFevre*, Mr. Justice Brewer, delivering the opinion of the court, said:

> * * * it is well settled that when the trial and the appellate courts agree as to the facts established on the trial, this court will accept their conclusion *and not attempt to weigh conflicting testimony.* *Stuart* v. *Hayden* (169 U. S., 1, 14), and authorities cited in the opinion. And this rule of concurrence with the conclusions of the trial and appellate

> courts is given more weight when in the first instance the facts are found by a master or a jury. *Furrer* v. *Ferris* (145 U. S., 132), and cases cited in the opinion. These propositions we have often affirmed.

In *Hy-Yu-Tse-Mil-Kin* v. *Smith*, Mr. Justice Peckham said for the court:

> The appellant further contends that the weight of the evidence shows the appellee is not a member of the Walla-Walla tribe of Indians. We are not disposed to review that question of fact, which has been determined by the special examiner and adopted by the Circuit Court and the Circuit Court of Appeals. *There is evidence upon which the fact as found may be based*, and it is not so plainly erroneous as to call upon this court to vary from its usual rule not to review the unanimous finding upon questions of fact of two courts, unless such finding is plainly erroneous. (*Stuart* v. *Hayden*, 169 U. S., 1, 14; *Baker* v. *Cummings*, 169 U. S., 189, 198; *The Carib Prince*, 170 U. S., 655; *Towson* v. *Moore*, 173 U. S., 17; *Smith* v. *Burnett*, 173 U. S., 430, 436; *Brainard* v. *Buck*, 184 U. S., 99.)

This doctrine of concurrence is given more weight by the finding of fact in the first instance by the Board of General Appraisers, whose findings, when supported by evidence, will not be disturbed on appeal.

> *In re Van Blankensteyn*, 56 Fed. 474, 475, C. C. A.
>
> *Apgar* v. *United States*, 78 Fed. 332, 334, C. C. A.

Vandiver v. *United States*, 156 Fed. 961, 962, C. C. A.

United States v. *Reibe*, 1 Ct. Cust. App. 19, 20.

Carson v. *United States*, 2 Ct. Cust. App. —; T. D.

The Court of Appeals, however, found "the reasoning in the Steinhardt case persuasive," and held that the articles are not dutiable as braids because they are elsewhere specially provided for as bindings. In reaching this conclusion they relied, not upon the definition of "braid" in the Standard Dictionary, as the Circuit Court did in the *Steinhardt case*, but on the definition of "binding" in that dictionary.

These braids are not bindings, for tariff purposes, and, therefore, are not elsewhere provided for under that name. On the contrary, the record shows that these braids are not used for any such purpose, and therefore they are not bindings under the tariff act, and are not specially provided for elsewhere than in paragraph 339.

They are invoiced as braids (R., 9, 13, 19); labeled in this country as well as abroad as braids (R., 32, 33, 41, 44, 78, 98, 101, 112, 137, 138); advertised as braids (R., 139) and bought and sold as braids.

The testimony for the Government is explicit that such articles were not commercially designated as bindings. This includes testimony in prior cases incorporated in this record. Every witness called for the Government in the present case so testified. All were competent. Those who were buyers for large

retail concerns were obviously qualified to testify as to terms used in the wholesale trade because they bought at wholesale for their respective houses. (R., 63, 71, 72, 81, 83). They, moreover, testified against their business interest, which naturally was to get a low rather than a high rate of duty. The testimony in part is as follows:

Farrell (R., 64):

Q. Would you call any of these exhibits I have shown you (referring to collective Exhibits A, B, and C) bindings?

A. I wouldn't call these bindings; no, not any of them.

Q. They are not known in the trade as bindings?

A. No, not as bindings.

Wilson (R., 67):

By Mr. WASHBURN:

Q. For covering seams or binding seams?

A. For trimming. They are featherstitch braids, used for trimmings and used over the seams.

Q. Seam coverings, aren't they?

A. Yes.

By Mr. NICHOLS:

Q. How are they ordered?

A. Featherstitch braids.

Q. When you have said seam coverings you only described their use?

A. Their use; they are put over the seams, on account of the fancy work on them; that makes them the trimming.

Q. Could you use any of them as binding?

A. No, sir.

Q. They are never called bindings?

A. No, sir.

Q. Are you familiar with what are known in the trade as bindings?

A. I buy them.

Q. You mean bindings are something entirely distinct from these exhibits?

A. Yes, sir.

Forsythe (R., 69):

Q. Can they be used as bindings?

A. No, sir.

Q. Are you familiar with what is known in the trade as bindings?

A. Yes.

Q. Are they an entirely distinct class of goods?

A. Yes; entirely.

Q. Would the fact that these Exhibits A and B are sometimes used to cover seams, would that make them bindings in any sense?

A. No; they couldn't be used as a binding; they are used as a finish, the narrow ones are used as a finish, where they join a seam together, like this here [indicating].

Stern (R., 74):

Q. Are you familiar with what is known as bindings in the trade?

A. Yes, sir.

Q. And are they a different kind of article?

A. Different kind of articles.

Q. Sold as——

A. Sold as bindings.

Q. Referring to this Exhibit E, for instance, and the narrow piece of cloth that is used to

cover the seam, made out of the same material as the garment, is that what you call a—— or what would you call that?

A. A binding tape.

Q. Does that in any way resemble any of these Exhibits A, B, or C?

A. No, sir.

Schloss (R., 78):

By Mr. NICHOLS:

Q. Are any of these goods known as "bindings" in the trade?

A. No.

By Mr. WASHBURN:

Q. You don't carry bindings, do you?

A. Yes; we sell and manufacture and buy bindings.

Williams (R., 79):

Q. They are bought and sold under the name featherstitch braids?

A. No other term.

Q. Are any of them known as bindings?

A. I would say no.

Q. That is a distinct class of articles, bindings?

A. Yes.

Heaphy (R., 84):

Q. You have always bought them under the commercial term featherstitch braids?

A. Yes, sir.

Q. And they are not bought as bindings?

A. No, sir.

Q. Or by any other name in fact?

A. No, sir; featherstitch braids is the only term that is ever used by us.

There is, moreover, testimony of witnesses for appellee to the same effect. Importer Steinhardt, after stating that the articles were known in trade as "seam bindings," "featherstitch braids," and "herringbone," testified in his own case (R., 179):

> Q. Is there a class of goods that you buy and sell by the commercial designation of bindings, exclusively?
>
> A. We have some bindings; yes, sir.
>
> Q. Will you describe what would be technically a binding in trade?
>
> A. A binding is an article—it is a tape, of silk or cotton, for finishing articles, to finish *the ends*, to complete an article.

Blaskopf, importer's witness in the present case, after stating on cross-examination that the seam covering is a braid, testified on redirect examination (R., 24):

> Q. Do you call it a binding also?
>
> A. You can not very well call it a binding, no; more of a braid, finishing braid.
>
> Q. It is, however, a seam binding?
>
> A. It is a seam banding.

Baruch, appellee, testified (R., 21):

> Cross-examination by Mr. NICHOLS:
>
> Q. Featherstitch braid is a kind of braid that you import quite generally?
>
> A. Yes, sir.
>
> Q. How long have these been known as featherstitch braids?
>
> A. As long as I can remember; it is about fourteen years.

Q. And known by any other name than featherstitch braids?

A. They are known by names such as seam binding, finishing tapes, and herringbone.

Q. Do you mean to testify that those things are all different kinds of featherstitch braids?

A. All the same.

Q. Your testimony refers to all the articles marked "Exhibits A, B, and C," which have just been shown you?

A. Yes, sir.

"*Seam* bindings" should not be taken for "bindings." The two terms stand for different things. The latter word appears alone, sometimes in leading questions, but only one (a manufacturer) of importer's witnesses in the present case, replying to specific inquiries for the names applied in trade to the articles in suit, mentioned "bindings" without "seam" or other qualifying or descriptive word (R., 21, 23, 27, 32, 35, 38, 39, 41, 46, 48, 49, 55, 56, 59), and his testimony has reference largely to terms used by the girls in his factory. (R., 52–54.)

"Bindings," commercially, is a specific name for tape or strips used to bind the edges of garments. They are folded or doubled over the edge. (R., 24, 28, 62–65, 67, 70–72, 74, 79, 88, 90, 158, 185.) The very narrow braids in suit are manifestly not adapted to such use.

"Seam bindings" do not bind anything, but, as admitted by witnesses for the importer, are used flat to cover seams and to give the garment a better or finished appearance. (R., 20, 22, 24, 29, 32, 33, 35,

38, 40, 41, 44, 48, 50, 52, 53, 55, 90, 91, 143.) The term is descriptive of use as coverings of seams. "Seam coverings" is more correct. (R., 28, 35, 41, 44, 58, 59, 67, 79.)

Other subordinate terms refer to special varieties or characteristics of the braids and are used in the retail trade. (R., 48, 75, 82, 84, 86, 109, 185.) The word "herringbone," for instance, denotes a stitch or pattern. (R., 28, 32, 35, 41, 64, 72, 79, 147.) "Seam banding" and "finishing tapes" are terms of frequent use. The meaning of "seam banding" is indicated in the statement of importer's witness Alvis (R., 58), that collective Exhibit A is used "to cover a seam as a banding"—a different article from binding, as shown by the separate provision therefor in paragraph 320 of the act of 1897. "Finishing tapes" obviously signifies an ornamental effect not produced by tape. Neither term supports the contention that the articles in suit are "bindings."

Nor does the effort of appellee's counsel to show that *silk taffeta* bindings are used flat (R. 81, 85, 88) tend to prove that cotton braids are bindings.

Featherstitch braids are more expensive and elaborate than bindings, and are used essentially to ornament or embellish garments (R. 24, 25, 29, 40, 54, 55, 58, 64–70, 74, 79, 84, 91), while bindings serve a practical use only, namely, to keep edges from raveling. It is wholly unnecessary to use these braids merely to *cover* seams; a plain strip without any ornamentation whatever would serve the purpose as well (R. 22, 26, 29, 61, 63, 64, 79); the plain object

of using the featherstitch braids for that purpose is to secure a finished and ornamental effect.

Braids do not have to be trimmings to come within paragraph 339 of the act of 1897. The law reads "embroideries and all trimmings, including braids * * *," but the word "including" before "braids" in that paragraph was used not by way of specification but by way of addition. (*Hiller* v. *United States*, 106 Fed., 73, 74, C. C. A.)

Both terms, however, might properly be applied, "trimmings" as descriptive of their character and use and "braids" as their commercial designation. In giving a finish or better appearance to a garment the articles are in the nature of trimmings. This is so whether they are used over seams or elsewhere on the garment. (R., 58, 62, 64–68, 76, 79, 84, 158, 161 *et seq.*, 178, 183.) Wherever used they are undoubtedly ornamental. Ornamentation is an element of the definition of "braids" but not of "bindings" in the dictionary relied on by the Court of Appeals, the only object of the latter's use being utility.

If such braids should be regarded as bindings when used to cover seams, they nevertheless could not be classified as the latter. The imported articles can not be followed into trade to ascertain their use before the assessment of duties. Classification must be determined upon an examination of the merchandise in its condition at the time of importation, when duty attaches. Indisputably braids at that time, they could not be classified as bindings upon

the assumption that they would be so used when as a matter of fact they might be used as braids. As was said in the leading case of *Worthington* v. *Robbins* (139 U. S., 337, 341), "it is apparent, from the facts stated, that the customs officers could not determine from an examination of the article to which of the uses named it was to be applied." It is immaterial whether the use elsewhere than on seams be extensive or slight. Use is not made a criterion by the law and chief use as such would not control. (*Loeb* v. *United States*, 150 Fed., 327, 328, C. C. A.)

The test is the name of the articles. They can not be both braids and bindings for tariff purposes. (*Arthur* v. *Stephani*, 96 U. S., 125, 127, 128; *Robertson* v. *Rosenthal*, 132 U. S., 460, 464; *Seeberger* v. *Cahn*, *supra*.) Congress has unmistakably distinguished them in absolutely independent provisions in the two tariff acts—1897 and 1909, *supra*—in which both appear. Braids, but not cotton bindings, were provided for by name in earlier tariffs. They were in paragraph 263 of the act of 1894, corresponding to paragraph 320 of the act of 1897, and were transferred to paragraph 339 of the latter act. As was said in *Hiller* v. *United States* (*supra*) "this comparison of the two acts indicates that Congress intentionally took braids out of the 45 per cent paragraph, where it had been in 1894, and put the article into a paragraph imposing a higher rate of duty; and that it intended to impose the rate upon the articles generally, irrespective of the use to which they might be applied."

As ordinary meaning can not be resorted to in derogation of commercial designation, the articles in suit can not be taken out of paragraph 339 of the act of 1897, unless shown to be bindings, not by a dictionary, but by commercial usage. Importers' witnesses testified that the word "bindings," in paragraph 320, is a commercial term. (R., 177, 179, 180, 181, 186.) That being so, its commercial meaning must, under the authorities, govern. To classify the braids under paragraph 320, they must be shown by proof to be definitely, uniformly, and generally designated and known in commerce as bindings.

> *Seeberger* v. *Schlesinger*, 152 U. S., 581, 585.
> *Maddock* v. *Magone*, 152 U. S., 368, 371.
> *Sonn* v. *Magone*, *supra*.

Such proof is palpably lacking. The Circuit Court of Appeals consequently erred in applying a meaning not of commerce as against a commercial designation for the articles as braids.

But if ordinary meaning could properly be invoked, to the exclusion of commercial designation, it would not show these braids to be bindings. The definition to be sought is not of one but of all the standard American dictionaries. Webster, Worcester, and the Century all limit "binding" to something that secures *edges*. They define it as follows:

Webster:

> * * * ; something that secures the edge of cloth from raveling.

APPENDIX.

PROVISIONS OF TARIFF ACTS OF 1894, 1890, AND 1883, CORRESPONDING TO PARAGRAPHS 339 AND 320 OF THE TARIFF ACT OF 1897, TOGETHER WITH SAID PARAGRAPHS.

1897.

Par. 320. Bandings, beltings, bindings, bone casings, cords, garters, lining for bicycle tires, ribbons, suspenders and braces, tapes, tubing, and webs or webbing, any of the foregoing articles made of cotton or other vegetable fiber, whether composed in part of india rubber or otherwise, and not embroidered by hand or machinery, forty-five per centum ad valorem; spindle banding, woven, braided or twisted lamp, stove, or candle wicking made of cotton or other vegetable fiber, ten cents per pound and fifteen per centum ad valorem; loom harness or healds made of cotton or other vegetable fiber, or of which cotton or other vegetable fiber is the component material of chief value, fifty cents per pound and twenty-five per centum ad valorem; boot, shoe, and corset lacings made of cotton or other vegetable fiber, twenty-five cents per pound and fifteen per centum ad valorem; labels, for garments or other articles, composed of cotton or other vegetable fiber, fifty cents per pound and thirty per centum ad valorem.

Par. 339. Laces, lace window curtains, tidies, pillow shams, bed sets, insertings, flouncings, and other lace articles; handkerchiefs, napkins, wearing apparel,

and other articles, made wholly or in part of lace, or in imitation of lace; nets or nettings, veils and veilings, etamines, vitrages, neck rufflings, ruchings, tuckings, flutings, and quillings; embroideries and all trimmings, including *braids*, edgings, insertings, flouncings, galloons, gorings, and bands; wearing apparel, handkerchiefs, and other articles or fabrics embroidered in any manner by hand or machinery, whether with a letter, monogram, or otherwise; tamboured or appliquéed articles, fabrics or wearing apparel; hemstitched or tucked flouncings or skirtings, and articles made wholly or in part of rufflings, tuckings, or ruchings; all of the foregoing composed wholly or in chief value of flax, cotton, or other vegetable fiber, and *not elsewhere specially provided for in this act*, whether composed in part of india rubber or otherwise, sixty per centum ad valorem: *Provided*, That no wearing apparel or other article or textile fabric, when embroidered by hand or machinery, shall pay duty at a less rate than that imposed in any schedule of this act upon any embroideries of the materials of which such embroidery is composed.

1894.

Par. 276. Laces, edgings, nettings and veilings, embroideries, insertings, neck rufflings, ruchings, trimmings, tuckings, lace window curtains, tamboured articles, and articles embroidered by hand or machinery, embroidered handkerchiefs, and articles made wholly or in part of lace, rufflings, tuckings, or ruchings, all of the above-named articles, composed of flax, jute, cotton, or other vegetable fiber, or of which these substances or either of them, or a mixture of any of them is the component material of chief value,

not specially provided for in this act, fifty per centum ad valorem.

Par. 263. Cords, *braids*, boot, shoe and corset lacings, tapes, gimps, galloons, webbing, goring, suspenders and braces, woven, braided, or twisted lamp or candle wicking, lining for bicycle tires, spindle binding, any of the above made of cotton or other vegetable fiber and whether composed in part of india rubber or otherwise, forty-five per centum ad valorem.

1890.

Par. 373. Laces, edgings, embroideries, insertings, neck rufflings, ruchings, trimmings, tuckings, lace window curtains, and other similar tamboured articles, and articles embroidered by hand or machinery, embroidered and hemstitched handkerchiefs, and articles made wholly or in part of lace, rufflings, tuckings, or ruchings, all of the above-named articles, composed of flax, jute, cotton, or other vegetable fiber, or of which these substances or either of them, or a mixture of any of them, is the component material of chief value, not specially provided for in this act, sixty per centum ad valorem: *Provided*, That articles of wearing apparel, and textile fabrics, when embroidered by hand or machinery, and whether specially or otherwise provided for in this act, shall not pay a less rate of duty than that fixed by the respective paragraphs and schedules of this act upon embroideries of the materials of which they are respectively composed.

Par. 354. Cotton cords, *braids*, boot, shoe, and corset lacings, thirty-five cents per pound; cotton gimps, galloons, webbing, goring, suspenders, and braces, any of the foregoing which are elastic or non-

elastic, forty per centum ad valorem: *Provided*, That none of the articles included in this paragraph shall pay a less rate of duty than forty per centum ad valorem.

1883.

Par. 325. Cotton laces, embroideries, insertings, trimmings, lace window curtains, cotton damask, hemmed handkerchiefs, and cotton velvet, forty per centum ad valorem.

Par. 324. Cotton cords, *braids*, gimps, galloons, webbing, goring, suspenders, braces, and all manufactures of cotton, not specially enumerated or provided for in this act, and corsets, of whatever material composed, thirty-five per centum ad valorem.

Par. 337. Flax or linen laces and insertings, embroideries, or manufactures of linen, if embroidered or tamboured in the loom or otherwise by machinery, or with the needle or other process, and not specially enumerated or provided for in this act, thirty per centum ad valorem.

Par. 495. Webbing, composed of cotton, flax, or any other materials, not specially enumerated or provided for in this act, thirty-five per centum ad valorem.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1911.

THE UNITED STATES, PETITIONER,
vs.
LEOPOLD BARUCH.
No. 190.

ON CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR THE RESPONDENT.

Statement.

The articles imported may be generally divided into two classes (1), the narrow goods, loom-woven goods, like Exhibits A and B (found by the Circuit Court of Appeals to be primarily articles of utility), that are bindings by ordinary meaning, by fabrication, and in use, as well as according to trade understanding, trade practice, and trade nomenclature, and (2), the broader goods, like Exhibit C (primarily articles of ornamentation), that are in the nature of trimmings.

The question for determination here is whether the A and B goods above referred to are dutiable as claimed by the respondents, and as held by the Circuit

Court of Appeals, under the specific and unlimited provision for bindings appearing for the first time in tariff legislation in paragraph 320 of the Tariff Act of 1897, which paragraph reads in full as follows :

> "Bandings, beltings, bindings, bone casings, cords, garters, lining for bicycle tires, ribbons, suspenders and braces, tapes, tubing and webs or webbing, any of the foregoing articles made of cotton or other vegetable fiber, whether composed in part of india-rubber or otherwise, and not embroidered by hand or machinery, forty-five per centum *ad valorem*; spindle banding, woven, braided or twisted lamp, stove, or candle wicking made of cotton or other vegetable fiber, ten cents per pound and fifteen per centum *ad valorem*; loom harness or healds made of cotton or other vegetable fiber or of which cotton or other vegetable fiber is the component material of chief value, fifty cents per pound and twenty-five per centum *ad valorem*; boot, shoe and corset lacings made of cotton or other vegetable fiber, twenty-five cents per pound and fifteen per centum *ad valorem*; labels, for garments or other articles composed of cotton or other vegetable fiber, fifty cents per pound and thirty per centum *ad valorem*";

or whether they are dutiable as held by the Board of General Appraisers and the Circuit Court under the provision for "trimmings, including braids * * * composed wholly or in chief value of flax, cotton, or other vegetable fibre, and not elsewhere specially pro-

vided for," as contained in paragraph 339 of that act, which reads as follows:

> Laces, lace window curtains, tidies, pillow shams, bed sets, insertings, flouncings, and other lace articles; handkerchiefs, napkins, wearing apparel, and other articles, made wholly or in part of lace, or in imitation of lace; nets or nettings, veils and veilings, etamines, vitrages, neck rufflings, ruchings, tuckings, flutings and quillings; embroideries and all trimmings, including braids, edgings, insertings, flouncings, galloons, gorings and bands; wearing apparel, handkerchiefs, and other articles or fabrics embroidered in any manner by hand or machinery, whether with a letter, monogram or otherwise; tamboured or appliqued articles, fabrics or wearing apparel; hemstitched or tucked flouncings or skirtings, and articles made wholly or in part of rufflings, tuckings, or ruchings; all of the foregoing, composed wholly or in chief value of flax, cotton or other vegetable fiber, and not elsewhere specially provided for in this Act, whether composed in part of india-rubber or otherwise, sixty per centum *ad valorem: Provided*, That no wearing apparel or other article or textile fabric, when embroidered by hand or machinery, shall pay duty at a less rate than that imposed in any schedule of this Act upon any embroideries of the materials of which such embroidery is composed.

The importer admits that 339 was the right paragraph for the broad articles represented by Exhibit

C, they being not elsewhere specially provided for in the Act, but insists that the narrow articles represented by Exhibits A and B fail to meet the description of "braids, not elsewhere specially provided for," in that they are specially provided for under the specific provision in paragraph 320 for cotton "bindings," which provision is unqualified and unrestricted.

It is apparent from the government's brief that the Assistant Attorney General is construing the statute as though it read the same as it did when the *Dieckerhoff* (54 Fed. Rep., 161) decision was rendered under the tariff act of 1890. The Circuit Court of Appeals was aware of the change in the statute and was aware that a different rule would apply if the statute remained the same. It said: "Had this question arisen under the tariff acts of 1890 or 1894, the situation would be entirely different." The statute has been changed since then in many ways, principally by the insertion of the word "bindings" in the tariff act of 1897, the one under consideration. This word must have some scope; in effect the government gives it none. Another fundamental error of the government's position lies in the premise that these articles are not commercially included within the term "bindings." If not included within the term "bindings," it is argued they cannot be "elsewhere specially provided for" and must remain where a commercial designation of "featherstitch braids," places them, to-wit, as "braids not elsewhere specially provided for." For the respondent it is asserted that an article may have a number of specific names such as featherstitch

binding, featherstitch braids, featherstitch tape, seam bindings, finishing binding, herringbone binding, finishing tapes, herringbone, feather stitching, webbing, herringbone webbing, seam tape, seam covering, and all be included in the class of articles known commercially as "bindings". The provision in the tariff law under consideration is not "featherstitch braids" or "featherstitch bindings," *eo nomine* provisions, like the "Bohea Tea" of *United States vs. Two Hundred Chests of Tea*, 9 *Wheat.*, 430, the "cotton bagging" case of *Curtis vs. Martin*, 3 How., 105, the "silk veil" case of *Arthur vs. Morrison*, 96 U. S., 108, the "gilling twine" case of *American Net & Twine Co. vs. Worthington*, 141 U. S., 468, the "furniture, finished" case of *Hedden vs. Richards*, 149 U. S., 346, or the "toys" case of *Cadwalader vs. Zeh*, 151 U. S., 171, cited in brief for United States, in which the terms construed all appeared in the law, but the provision is "*braids*" and "*bindings.*" The words "braids" and "bindings" are general terms, each of which includes a number of articles having various specific names. If then it appears by this record that these articles, known by these various specific names, are included within the class of articles known commercially as "bindings," the premise upon which the Government's position is founded is unwarranted, and the articles must be held to be "elsewhere specially provided for" than in paragraph 339 under the general term "braids," and therefore excluded from paragraph 339.

On the application for a writ of *certiorari*, it was

urged by the United States as one of the reasons why the writ should be allowed that decisions in different circuits were in conflict. This conflict is not now urged, so that the question of uniformity of decisions in different circuits is not before this Court. There has only been one decision by a circuit court of appeals upon the merits of this controversy, and that is the decision here to be reviewed.

ARGUMENT.

I.

The A and B goods are included in the class of articles known commercially as "bindings."

This proposition is to be determined by the test approved by this court in *DeJonge vs. Magone*, 159 U. S., 562, referred to on page 17, of brief for the United States. This case concerned the duty on certain "fancy paper" and this court, Mr. Justice (now Chief Justice) WHITE writing the opinion, approved the following charge to the jury:

> "Was this article, in the trade and commerce of this country, when Congress legislated in 1883, a variety of paper? In other words, if the committee of Congress that framed this act and reported it to Congress had turned to the trade and commerce of this country of 1883 and had asked that trade for a comprehensive list of all kinds of paper known to them and

> dealt in commercially as such, would paper like this have been included in such list? If the commerce of the country had furnished to the committee of Congress, in answer to such a request, a list of all the kinds of paper known to that trade, and if such list enumerated articles like, these, then they are covered by the phrase 'all other papers' in paragraph 392."

So here in the present case the question is not "What is the most general commercial name for these goods", but "Was this article in the trade and commerce of this country, when Congress legislated in 1897," a variety of "binding", just as the question in the *DeJonge* case was "Was the article in the trade and commerce of this country, when Congress legislated in 1883, a variety of paper", and not "Was its specific name," "morocco paper," "embossed paper," "imitation of velvet paper or what not?"

This is further emphasized by the case of *Drew vs. Grinnell*, 115 U. S., 477. There the tariff term in question was "silk laces." It appeared from the bill of exceptions that the merchandise was commercially known as "spot net" or "dotted net." Defendant offered proof to show "that the term 'silk laces' was not generally regarded, in trade and commerce, in the United States, among wholesale dealers in and importers of laces, as a commercial term, used to designate any particular article of trade, but was generally understood to include all laces which were made wholly or substantially of silk; that each particular lace had a particular trade name; that the goods

which were the subject of controversy in this suit were a particular kind of silk lace called 'spotted or dotted net'; that they were made upon lace machines; that in trade and commerce generally in the United States, laces were understood to be delicate, thin ornamental net work, the meshes of which were formed by plaiting together threads of silk, cotton or other material; and that the goods which were the subject of controversy in this suit corresponded with that definition."

This court said:

> "The jury were, in substance, told (1) that the plaintiffs were entitled to recover if the article was not a silk lace; (2) that it was a silk lace, if it was a lace of which silk was the component material of chief value, unless at the time the act was passed it was commercially known here as a different article; (3) that, if it was commercially known as 'spot net' or 'dotted net', it would fall under the 50 per cent. clause, but if it was so called as one of the varieties of silk lace, each of which had a particular distinguishing name, it was, nevertheless, a silk lace, within the meaning of the act."

And approved the charge to the jury.

So here, even if it were found that the term most generally applied to these goods is "featherstitch braids," that would not withdraw them from the provision for "bindings" so long as they were regarded in trade as a variety of bindings, any more than the

"spot net" designation in the *Grinnell* case excluded the merchandise from the term "silk lace".

This principle laid down many years ago, has been so repeatedly followed and sanctioned that it is absolutely settled law. It was last applied in *Loewenthal vs. United States*, 1 Court of Customs Appeals (T. D., 31592), wherein the court said:

> "We think a very good statement of the law is contained in the charge of LACOMBE, Judge, in *Sidenberg v. Robertson* (41 Fed. Rep., 763), from which we quote:
>
> The plaintiff has to cover with his trade evidence both descriptions of words—the words under which the laces are actually bought and sold, and also the word or words under which he claims that they are not known. Of course, if the particular word or phrase by which they were bought and sold were one of the phrases or words in the tariff act, as soon as he had proved that the articles were bought and sold, and known in commerce by that word or phrase, he would have proved his whole case. But where the particular word, the trade meaning of which he proves is not in the tariff act, and that instrument contains only general words, he must go further, and prove not merely that the articles are bought by one particular trade name, but that the general words used in the tariff act, which otherwise would cover them, do not cover them in trade and commerce."

Proof of commercial meaning to be at all effective must be addressed not simply to the commercial desig-

STEINHARDT (Rec., 36):

Q. Would a request for a complete line of samples of bindings and tapes, especially bindings, be complete without the inclusion of featherstitched goods, such as are represented by the Collective Exhibits A and B?

A. No, sir.

See, also, Rec., 177, 178, 179.

HILDER (Rec., 41):

Q. Would an order for bindings be complete without the inclusion of samples like the official exhibits?

A. It would not.

See, also, Rec., 42.

YANKAUER (Rec., 46):

Q. Would an order for binding in your trade, Mr. Yankauer, be complete without including articles like the official exhibits, not, however, referring to the Exhibit C?

A. No, it would not.

FARMER (Rec., 49):

Q. Would you say that the term binding would more narrowly describe the goods than any other term, more specifically?

A. I should think so.

VOM BAUR (Rec., 98):

Q. Do you consider as a merchant that it would have been at any time possible to com-

pletely fulfill the trade meaning of the term bindings without including these goods?

A. No.

STOCKUM (Gov., Rec., 101):

Q. What does that say?

A. The word on there says featherstitch braids but we don't buy these goods as featherstitch braids.

Q. How do you buy them?

A. Buy them as cotton binding.

Q. Do you order them that way?

A. We order them that way, buy them that way as such, and sell them as such.

Q. How are they invoiced to you?

A. As bindings.

KELLER (Gov., Rec., 106):

Q. Is it true they are usually sold and billed as featherstitch braids?

A. No.

Q. How are they usually known?

A. Well, they use in my experience with those goods all kinds of names—herringbone binding, seam binding, featherstitch braids, finishing braid, finishing tape, finishing binding—in fact, the three words are synonymous with this class of goods, tape, binding or braid."

HAGUE (Gov., Rec., 109, 110):

Q. The great bulk of your customers are manufacturers?

A. No, mostly, the wholesale jobbing trade.

Q. How do they order?

A. Under various designations.

Q. Which is the most general one that you know of?

A. Binding.

KRACHEHL (Gov., Rec., 117):

Q. Do you know of any term which describes the goods as specifically as featherstitch braids.

A. Yes, sir.

Q. What is that term?

A. Seam tape, featherstitch binding, seam covering.

BERG (Rec., 146):

Q. Referring to a period at and prior to 1897, please state the name or names by which that product was bought and sold in trade?

A. As long as I have been dealing in it they have been known as seam binding, principally covering up seams.

HORRAX (Rec., 151):

Q. By what names are they usually bought and sold, as I understand you to say?

A. Seam binding.

NEUBERGER (Rec., 154):

Q. Please state the name or names by which at and before 1897, that merchandise was

designated among merchants in the markets of this country?

A. Seam bindings, featherstitching, featherstitch bindings; half a dozen names I have heard.

Q. You have heard them called featherstitch braids, have you not?

A. I have.

WEILLER (Rec., 186):

Q. Now if a merchant were to ask for a list of the things which are bindings, could he make a complete list, adhering to the understanding of trade, without including these featherstitch braids under the list?

A. No.

See, also,

Ferguson, Rec., 87.
Ganong, Rec., 180.
Connell, Rec., 183.
Klemschmidt, Rec., 187.

Opposed to this testimony of commercial meaning of "bindings" the Government offered the testimony excerpts of which are set forth on pages 39, 40, 41 of its brief.

It is to be noticed that the testimony of six of these seven witnesses (Farrell, Wilson, Forsythe, Stern, Williams and Heaphy) is incompetent. They were all connected with retail New York dry goods stores, and could not therefore testify as to the understanding of the wholesale trade. Moreover, the record shows that by *wholesale* dry goods houses in New York City,

like H. B. Claflin Co. and Mills & Gibb, these articles were sold generally in and prior to 1897 under the name of bindings, or seam bindings, or herringbone bindings, as well as under the name featherstitch braid, and by *those* houses the term " bindings " was regarded either as equally specific and general with the term " featherstitch braid," or as more specific and more generally used than the latter term.

Krackehl, Rec., 181.
Connell, Rec., 183.
Ganong, Rec., 180.

It is not the usage of the retail trade which brings a provision within the rule of commercial designation, but it is the understanding of that trade which buys and sells at wholesale.

Morrison vs. Miller, 37 Fed. Rep., 82.
Stewart vs. United States (C. C. A.), 113 Fed. Rep., 928.

The Government justifies the competency of the department store witnesses upon the ground that although they were buyers for large retail concerns they bought at wholesale for the respective concerns (Appellant's Brief, pp. 38, 39). Upon the authorities cited we do not believe the testimony competent, but if it is, then by the same test the *testimony of the manufacturing consumers*, as a class, namely, the makers of undergarments, infant's clothing, caps, waists, etc., nine in number, who were called as witnesses in this case, who bought and used the goods in wholesale quantities, is also competent. Their

testimony is that they had always regarded them in their trade as bindings.

Seven of these nine manufacturers (namely, Gideon, Lewit, Alvis, Herman, Martin, Jacobs and Blaskopf) did not employ the term featherstitch braids in any portion of their testimony, and three of them did not recognize the merchandise at all under the name of featherstitch braids.

Gideon, who handled the goods since 1880, testified that herringbone, featherstitch, herringbone binding and featherstitch binding were the only names he had ever known them by (Rec., 38).

Lewit, who had used the articles in large quantities for many years, stated in effect that they were regarded in his trade as bindings and not as braids (Rec., 53, 54).

Alvis, with 24 years' experience, testified that an order for seam bindings or herringbone bindings would be filled by the delivery of goods of this character (Rec., 55).

The record points to the fact that "featherstitch braids" is a foreign term, first invented by foreign manufacturers (Rec., 106; Rec., 32; Rec., 33; Rec., 35; Rec., 41; Rec., 110).

Blaskopf alluded to the merchandise as braids or seam banding rather than bindings, but he referred to it also under the name of "seam binding" (Rec., 23), and testified that "finishing tapes" was a name just as generally employed as any of the others that he mentioned (Rec., 25). He contrasted plain bindings

with fancy bindings (Rec., 26). Nowhere in his testimony did he use the term featherstitch braid.

Sonn, in his answers, repeatedly referred to the merchandise as binding or herringbone binding (Rec., 29). He admitted some familiarity with the term featherstitch braid, but testified that the term binding would more aptly describe the goods, and that herringbone binding was the most common word used in this country, and that that was the original name (Rec., 28).

See, also,
Herman, Rec., 152.
Martin, Rec., 157.
Jacobs, Rec., 158.

Broadly speaking, three different trades or classes of dealers were represented by witnesses called by both sides to give testimony on the question of commercial designation, The witnesses, 35 in number, may be properly divided as follows:

7 Dry goods dealers, 6 of whom were retail dealers, and only one of whom was a dealer at wholesale;
19 Wholesale notion dealers, and
9 Wholesale manufacturing consumers, that is, those who used the articles in dispute in large quantities in the manufacture of children's underwear, caps, etc.

Of these 35 witnesses the government relied upon the testimony of the dealers of the first class mentioned above, to wit, the seven dry goods dealers, in support

of the exclusive featherstitch braid nomenclature. Of these seven dry goods dealers, six were in the retail business and, as we believe, were incompetent to testify. Opposed to these seven dry goods dealers is the overwhelming testimony of the nineteen wholesale notion dealers whose competency is beyond question, and the testimony of the nine wholesale manufacturing consumers, all of which evidence goes to the point of establishing conclusively that the merchandise was on and prior to July 24, 1897, known in different trades and in different parts of this country under various names, as seam bindings, featherstitch bindings, featherstitch braids, as well as by other names, and that no general, definite, and uniform designation was applied to it.

Furthermore, the evidence furnished by the nineteen importers of and wholesale dealers in notions (including Exhibits A and B), as hereinbefore indicated, establishes that the articles in suit, although called by these various specific names, were included in the class of goods known commercially under the general term *bindings*.

Further still the testimony of the manufacturing consumers as a class, namely, the makers of undergarments, infants' clothing, caps, waists, etc.—nine in number—who bought and used the goods in wholesale quantities, was to the like effect that they had always regarded them in their trade as bindings.

The Circuit Court of Appeals has found that these goods are bindings in fact (Rec., 197, 198). This record further establishes undeniably that they have

always been recognized commercially as bindings in the wholesale trades wherein they are handled most largely.

On page 22 of the Government's brief, some stress is laid upon the rule as laid down by this Court in *Arthur vs. Cumming*, 91 U. S., 362, 363, "that descriptive terms applied to articles of commerce shall be understood according to the acceptation given to them by commercial men in our own ports at the time of the passage of the act in which are found."

That this merchandise was not regarded in 1897 by domestic braid manufacturers as braids is indicated by the only petition concerning braids that was addressed to the Ways and Means Committee prior to the enactment of the law of July 24, 1897, to wit, the petition of "The Braid Manufacturers Association of the United States," which read in full as follows:

"NEW YORK, December 28, 1896.

"COMMITTEE ON WAYS AND MEANS:

"We, the Braid Manufacturers Association of the United States, respectfully represent to your honorable body the necessity for revision of the tariff affecting braids manufactured of cotton, Schedule I; silk, Schedule L; wool, Schedule K; metal, Schedule C; braid buttons, Schedule N.

"As yarns from our raw material in the manufacture of braids, a sufficient difference should exist between the rates of duty that are levied on our raw materials and THE FINISHED PRODUCT OF THE BRAIDING MACHINE. In order to have adequate protection on all our manufactures, it

would be necessary to have the rates on braids, in all above schedules, exceed those on yarns by not less than the rates levied on braids exceeded those on yarns in Schedule K of the tariff of 1890. We are in favor of a compound duty.

THE BRAID MANUFACTURERS' ASSOCIATION OF THE UNITED STATES."

Tariff Hearings before the Committee on Ways and Means—1896–7, page 1191.

Thus it appears that the only persons who asked for higher protection on braids at the time the tariff of 1897 was being framed (*i. e.*, the Braid Manufacturers' Association of the United States), did so with reference to braids generally, which they defined as "*the finished product of the braiding machine*," thus showing very clearly that they, at least, understood "braids" to be, and had in mind when they made their petition for higher duties, *a different class of goods entirely* from the merchandise in suit, to wit, articles made on braiding machines as distinguished from loom-woven articles or bindings with warp and weft threads.

II.

By ordinary meaning the goods are bindings.

The Government attacks the finding of fact made by the Circuit Court of Appeals that these articles are bindings and asserts the contrary, because Web-

ster, Worcester and Century Dictionary all limit "binding" to something that secures edges. The definitions of "binding" in these dictionaries, together with that of the Standard, are set forth on pp. 47, 48, of brief for United States.

For convenient reference, they are :

Webster :

> * * * ; something that secures the edge of cloth from raveling.

Worcester :

> Something that secures the edges of textile fabrics from raveling.

Century :

> * * * ; something that secures the edges of cloth or of a garment.

Standard :

> A braid or strip folded and sewed on the edge of any fabric or sewed over the place where two parts are joined, so as to protect and secure the parts covered by it.

That use is exactly the use of the goods in suit. Where two pieces of cloth are sewn together the edge of each piece of cloth protrudes beyond the point where they are stitched together ; these edges, in the nature of things, will unravel and present an unfinished condition. To prevent this raveling the merchandise, like A and B, is used to bind these edges, as the learned Judge at Circuit put it, "to cover and unite the raw edges" (Rec., p. 189) This is demonstrable on inspection of illustrative

Exhibits D, E, F, G, L, herein. In other words, the merchandise exactly meets all the definitions cited. The definition in the Standard dictionary is in more precise terms, but is not in conflict with the other definitions.

Another definition, not set forth in petitioner's brief, is from Spons' Encyclopædia of Industrial Arts, page 1762:

> "Bindings are kindred articles to braids, but usually of rather different texture; the two sides are not alike, the front having a diagonal or herringbone twill, while the back is plain."

This definition in exact terms describes the merchandise in controversy.

The Circuit Court of Appeals in the present case said:

> "But these featherstitch braids, being used for the purpose of binding seams, are, in our opinion, the kind of braids properly called bindings."

On the question of use see

Sonn, Rec., 27.
Weiller, Rec., 33.
Hilder, Rec., 41.
Yankauer, Rec., 45.
Lewit, Rec., 52.
Alvis, Rec., 58.
Miss Forsythe (Gov.), Rec., 71–72.
Williams (Gov.), Rec., 81.
Hague (Gov.), Rec., 108.
Horrax, Rec., 149.
Herman, Rec., 153–154.
Martin, Rec., 157.

The testimony of ten other witnesses on the subject of use, merely cumulative of the foregoing, is found at pages 20, 22, 38, 48, 87, 88, 144, 154, 181, 183, 187, of the Record.

To what articles or class of goods, then, can the provision for bindings be more appropriately applied than to the merchandise in suit, represented by collective Exhibits A and B?

III.

The rule of commercial designation.

We fully subscribe to the proposition so ably set forth under point II. of the government's brief:

> "It has long been a settled rule of interpretation that if words used in a statute imposing duties on imports had at the time of its passage a well-known signification in our trade and commerce, differing from the ordinary meaning, the commercial designation must prevail, unless Congress has clearly manifested a contrary intention; and it is only when no commercial usage is called for or proved that the common meaning is to be adopted."

Stated in another way, the ordinary meaning of a term used in the tariff law is to be taken, unless that word has in trade and commerce acquired some special signification. Tariff acts being addressed to trade and commerce, Congress uses terms in a commercial

sense, unless it appears from the context that it did not so intend. But we must supplement counsel's exposition of the rule by the statement that the commercial meaning of a term in a tariff law must be definite, uniform and general, and not partial, local or personal.

Maddock vs. Magone, 152 U. S., 368, 371.
Berbecker vs. Robertson, 152 U. S., 373, 376.
Sonn vs. Magone, 159 U. S., 417, 421.
Patton vs. United States, 159 U. S., 500, 506.

The reason for this is manifest, because Congress legislates with respect to the entire country, not specially for the east or the west, or the south, or the north. Therefore if commercial meaning, differing from ordinary meaning, is to attach to a term used in a tariff law, it must be a meaning or understanding that is uniform throughout the United States.

The only witnesses in this entire record who represented or purchased merchandise for dry goods concerns *outside of New York*, to wit, for concerns in the South and West, agreed that in those sections the merchandise was generally termed and purchased by their houses under the name of seam bindings or featherstitch bindings.

Ferguson, Rec., 87, 88, 92, 93.
Fantl, Rec., 61.

If the commercial meaning prevailing in the north or east were to attach to a tariff term against that prevailing

in the south and west, it is clear that different interpretations would result, dependent upon trade customs in different sections of the country, or nomenclature in the particular section. To meet such situation this court qualified the commercial designation rule and requires that the general name must be uniform throughout the country before the rule applies.

The theory upon which this case was decided by the Circuit Court of Appeals, and the language employed by that tribunal show clearly that the Court did not deem any detailed or minute examination of the record or weighing of the evidence necessary, to determine the validity of our contention that these articles were bindings commercially as well as in fact, and that they were generally known as bindings in the wholesale trades in this country.

The Board of General Appraisers and the Circuit Court merely found that these articles were "generally known" as featherstitch braids. Neither of those tribunals nor the Circuit Court of Appeals made any finding of fact that these goods were uniformly known as featherstitch braids. Indeed, the record would not warrant such a finding.

Therefore, the citations concerning concurring decisions of two courts upon a question of fact (page 36, appellant's brief) are not in point.

At this point, parenthetically, it may be noted that in the General Appraiser's summary of the testimony, as set forth in the Board's opinion (Rec., 9–18), there were most unfortunate omissions.

Thus, from Krackehl, the Board quoted:

> Q. Do you know of any term which describes these goods more specifically than the term featherstitch braids? A. No, sir; I do not.
>
> Q. Now has the commercial designation or designations of this article (Exhibit G) changed during the time you have been familiar with it? A. No, sir; not that I know of.

The Board omitted to quote:

> Q. Do you know of any term which describes the goods as specifically as featherstitch braids?
>
> A. Yes, sir.
>
> Q. What is that term?
>
> A. Seam tape, featherstitch bindings, seam covering.

The Board further omitted to quote the following excerpts which materially change the effect of the excerpts quoted by Board.

Stockum, Rec., 101:

> Q. Do you undertake to say that the term bindings is more frequently used in your invoices than featherstitch braids? A. Yes, sir.
>
> Q. That is true, is it? A. Yes, sir.

Keller, Rec., 106:

> Q. Is it true that they are usually sold and billed as featherstitch braids? A. No.
>
> Q. How are they usually known? A. Well, they use in my experience with those goods, all kinds of names, herringbone binding,

seam binding, featherstitch braids, finishing braid, finishing tape, finishing binding—in fact the three words are synonymous with this class of goods, tape, binding, or braid.

HAGUE, Rec., 109–110:

Q. How do they order?
A. Under various designations.
Q. Which is the most general one that you know of?
A. Binding.

As indicated under Point I. the cases cited in the brief for the United States were cases where the proof of commercial designation was directed to the words or terms used in the tariff act, such as "cotton bagging," "Bohea tea," silk veils," "furniture, finished," "gilling twine," etc. The term "featherstitch braids" does not appear in the tariff act in question. The reason for the rule of commercial designation as enunciated in all cases cited by Government is that Congress in using terms in a tariff act uses them in their commercial signification. This rule manifestly cannot be invoked to apply to a term not in the statute, for the reason that Congress did not use that term.

The language in paragraph 339 is descriptive, and not commercial. Under the decisions of this Court, the doctrine of commercial designation, therefore, in the present instance is not of primary importance.

In *Barber vs. Schell*, 107 U. S., 617, certain laces and insertings composed wholly of cotton were in-

volved. Mr. Justice BLATCHFORD, speaking for this Court, said (p. 621):

> "The designations qualified by the words 'cotton,' in the act of 1846, are designations of articles by special description, as contradistinguished from designations by a commercial name or a name of trade. They are designations of quality and material. * * * This was the view applied by Mr. Justice NELSON in *Reimer vs. Schell*, 4 Blatchf., 328, in 1859, to colored cotton hosiery, under the provisions in question, and we think it a sound one. It was the view adopted by the Circuit Court in this case. There is no question of commercial designation. Hence, the cases cited and relied on by the importers are not in their favor."

Thereupon the Court proceeded to distinguish numerous cases, notably *Arthur vs. Lahey*, 96 U. S., 112, cited by the learned Assistant Attorney General on page 29 of his brief.

Furthermore the reasoning of this Court in *United States vs. Klumpp*, 169 U. S., 209, 216, shows conclusively that the case of *Arthur vs. Lahey* is not in point.

The question in the *Klumpp* case was whether certain worsted dress goods were or were not affected by a provision for a reduction in duties on manufactures of wool, and Mr. Chief Justice FULLER delivering the opinion of the Court, in holding that they were, said:

> "It will be perceived that the Acts of 1890 and 1894 did not levy duty on 'worsted dress

goods' *eo nomine*, nor on worsted dress goods by commercial designation, nor on worsted dress goods as distinguished from woolen dress goods; but a duty on dress goods, whether made of 'wool, worsted, the hair of the camel, goat, alpaca or other animals'. The description is addressed to the quality and material of the goods, namely, women's and children's dress goods, made of wool, worsted, etc.

"The principle then that the special designation of an article by its commercial meaning should prevail over general terms used in the same or a later act, has no application."

In *Schiff vs. United States*, 99 Fed. Rep., 555 (C. C. A., Second Circuit), it was said with reference to a provision for braids . . . composed of straw, etc.:

"We have here no question of commercial designation. The tariff act does not lay duty upon 'straw braid'—a term which might have a definite meaning in trade and commerce—but upon 'braids composed of straw,' etc., and there is no evidence that the words 'straw,' 'chip,' or 'grass,' when applied to the raw material, have any peculiar commercial meaning."

99 Fed. Rep., p. 557.

So, here, Congress has not designated this merchandise by any specific name, such as featherstitch bindings, or seam bindings or featherstitch braids, but has inserted a broad descriptive provision in paragraph 339

to include such braids composed wholly or chiefly of cotton, flax, or jute as were not elsewhere specially provided for in the Act.

IV.

Congress in transferring the unqualified provisions for "braids" from the notions paragraph (263) of the Act of 1894 to the trimmings paragraph (339) of the Act of 1897, making it read "trimmings, including braids," and further restricting its operation by adding the clause "not elsewhere specially provided for," and at the same time inserting a provision for the first time in tariff legislation for "bindings * * * of cotton" without words of qualification or restriction, clearly expressed its intention to limit the high tax of 60 per cent. to such braids as were not bindings.

Congress provided for cotton bindings for the first time in the law of 1897. What did it have in mind? We turn to a decision of the Board of General Appraisers rendered more than two years prior to the passage of the Act of 1897, to wit, on January 7, 1895, known as G. A. 2850, on a protest of C. M. Vom Baur, the appellant in *Vom Baur vs. U. S.*, 141 Fed., 139, wherein the Board said:

> "The merchandise here is cotton braid, known as 'seam bindings,' . . . that it is used for seam binding; that it is similar to a feather-stitch braid."

And Congress recognized this distinction, because in enacting the law of 1897, it struck out the word "braids" from the notions paragraph (320), and substituted in its place the word "bindings," and then carried over the word "braids" to the "trimmings" paragraph (339), but said "trimmings, including braids, * * * not elsewhere specially provided for."

This gives force to the logic of the dissenting Judge in *Hiller vs. United States*, 106 Fed. Rep., 73, cited on page 45, appellant's brief, "that Congress intended by paragraph 339 of 1897 to cover only such braids as are trimmings." This construction of the law makes the related parts of it entirely harmonious and consistent. It is to be noted, moreover, that whilst the divided Court reached its conclusion in this case upon the theory that the word "including" in paragraph 339 was by way of addition, not by way of specification, the same Court unanimously held in a later decision (*Goldenberg vs. United States*, 130 Fed. Rep., 108) in effect that the same word similarly appearing in paragraph 314 of the same act was by way of specification and not by way of addition.

See, also:

In re Johnson, 56 Fed. Rep., 822.
Claflin vs. United States, 78 Fed. Rep., 805, and
In re John Hope, 100 Fed. Rep., 286,

wherein the word "including" was construed in accordance with its evident meaning in 339.

In this connection it is most important to note and

to have clearly in mind the general scope of paragraph 339 as compared with the general scope of paragraph 320. Paragraph 339 is distinctively the vegetable fiber trimmings paragraph of the Dingley law, providing as it does for insertings, flouncings, nettings, rufflings, ruchings, tuckings, galloons, laces, embroideries, trimmings, etc., the primary or main purpose of which is for the embellishment or ornamentation of dresses or outside garments, which group of articles is handled, broadly speaking, by dealers in trimmings, as distinguished from dealers in notions or small wares; whereas paragraph 320, on the other hand, is distinctively the vegetable fibre notions paragraph of the Dingley law, providing as it does for bandings, beltings, bindings, bonecasings, cords, ribbons, tapes, webbing, etc., all of which are primarily or mainly articles of utility, and handled by dealers in notions and small wares. And in this connection it should be noted that there is substantial agreement among the witnesses that these goods are for the most part carried, not in braid or trimming departments, but in notion departments.

As the Court below very pertinently said in its opinion :

> "The question is, not whether the articles are braids, but whether they are braids not elsewhere provided for in the act. * * * But these feather-stitch braids, being used for the purpose of binding seams, are, in our opinion, the kind of braids properly called bindings. And we think that it may fairly be assumed that, when

> Congress inserted the word ' bindings ' in the ' notions ' paragraph and transferred the word ' braid ' to the ' trimmings ' paragraph with words of qualification it intended to embrace in the latter paragraph only such braids as were not bindings. If the articles are bindings, as well as braids, the provision in the ' notions ' paragraph is the more specific. Bindings are embraced without the words of restriction or qualification. These articles as bindings are necessarily included, and they are specially provided for elsewhere than in paragraph 339."

Our learned adversary seeks to support his contention by pointing to the Tariff Act of 1909 (Brief, p. 10). But clearly any inference to be drawn from this subsequent legislation cannot aid the government. Where an act repeals or replaces an existing law, changes of language must be construed to indicate change of intent. And so the Circuit Court of Appeals for the Second Circuit in the case at bar held, when, in tracing the development of legislation, it pointed to the significant transfer of the provision for braids from the " notions " paragraph of the law of 1894 to the " trimmings " paragraph of the law of 1897, which is restricted by words of qualification and also to the appearance for the first time of the provision for bindings without words of restriction and qualification in the " notions " paragraph of the law of 1897. In the further development of legislation marked change of language accompanied by much transposition is found in the law of 1909, which is

consistent only with still further change of intent. What change of intent?

Paragraph 349 of the new law is as follows:

> "(349). Laces, lace window curtains and all other lace articles; handkerchiefs, napkins, wearing apparel and all other articles made wholly or in part of lace or laces, or in imitation of lace; nets, nettings, veils, veilings, neck rufflings, ruchings, tuckings, flutings, quillings, embroideries, trimmings, braids, featherstitch braids, edgings, insertings, flouncings, galloons, gorings, bands, bandings, belts, beltings, bindings, cords, ornaments, ribbons, tapes, webs and webbings; wearing apparel, handkerchiefs and other articles or fabrics embroidered in any manner by hand or machinery, whether with a plain or fancy letter, initial, or monogram, or otherwise, or tamboured, appliqueed, or scalloped, by hand or machinery, for any purpose, or from which threads have been drawn, cut or punched to produce openwork, ornamented or embroidered in any manner herein described, in any part thereof, however small; hemstitched or tucked flouncings or skirtings; all of the foregoing, composed wholly or in chief value of cotton, flax or other vegetable fiber, or of cotton, flax or other vegetable fiber and india rubber, or of cotton, flax or other vegetable fiber, india rubber and metal, and not elsewhere specially provided for in this section, sixty per centum *ad valorem:* Provided, That no article composed wholly or in chief value of one or more of the materials or goods specified in this paragraph shall pay a less rate of duty

than the highest rate imposed by this section upon any of the materials or goods of which the same is composed.

AND PROVIDED FURTHER, That no article or fabric of any description, composed of flax or other vegetable fiber, or of which these materials or any of them is the component material of chief value, when embroidered by hand or machinery, or having hand or machinery embroidery thereon, shall pay a less rate of duty than that imposed in this section upon any embroideries of the materials of which such embroidery is composed."

Plainly the "notions" paragraph of the law of 1897 has been virtually merged and incorporated into paragraph 349 of the present law, which is *in pari materia* with paragraph 339 of the old law. The "notions" paragraph of the law of 1909 (330) has been much emasculated. Surely this was not inadvertent. It is a fair inference that Congress, presumably, aware that the two paragraphs 320 and 339 of the law of 1897 had been much in conflict and productive of much litigation, sought to avoid this in future, and in seeking to effect this purpose it recognized that the provision for braids was not sufficiently specific or comprehensive and, therefore, inserted the provision for featherstitch braids.

This term "featherstitch braids," as the record shows, is loosely employed. Besides being one of the terms applied to the narrow woven articles here in controversy shown in Exhibits A and B, it is also used to designate the very unlike wide articles shown in

Exhibit C, which are manifestly solely ornamental in character and, as such, braids concededly within the scope of the "trimmings" paragraph 339. But whatever the legislative intent evinced by the use of the term "featherstitch braids" in the new law, it is clear that Congress could not fail to recognize that the term "bindings" was potential in connection with the narrow articles as shown by Exhibits A and B here in controversy, for such was the state of the law when the Act of August 5th, 1909, was passed as declared the preceding spring by the Circuit Court of Appeals for the 2nd Circuit.

The Assistant Attorney-General would appear to concede that the narrow articles in controversy are *seam* bindings, but he appears to think that "'*seam* bindings should not be taken for bindings'" and that "the two terms stand for different things" (Brief, p. 43). If such an argument has any validity, what becomes of his contention that featherstitch braids are braids?

Our learned adversary further advances the argument that the articles in controversy cannot be both braids and bindings *for tariff purposes*, and that *for tariff purposes* braids and bindings are independent enumerations. (Brief, 46 and 10). The record establishes conclusively that in trade usage the terms braids and bindings are overlapping terms, but it may be safely conceded that *for tariff purposes* they each have an independent and separate scope. Such indeed is the respondent's contention. Numerous instances may be cited where the language of more

than one paragraph in fact applies to the same article. The question then is, which paragraph is applicable in the tariff sense? Thus in *Goldenberg vs. United States*, 130 Fed. Rep., 108, the Circuit Court of Appeals Second Circuit held that the provision for "wearing apparel * * * made wholly or in part of lace" applied to lace neckwear rather than the provisions for "article of wearing apparel of every description including neckties and neckwear," the provisions for neckwear in the latter paragraph being rather by way of specification than by way of extending the scope of the paragraph.

In *United States vs. Siegle*, 1 Ct. Cust. App., 32, T. D. 31,005, it was held that certain bronze lakes and scarlet lakes were dutiable as "colors * * * containing lead" without any words of limitation or qualification rather than as "lakes not otherwise specially provided for." In other words, the lakes were held to be otherwise provided for as colors containing lead.

It is proper to note that the Assistant Attorney-General is in error on page 1 of his brief in stating the articles in question have embroidery on them. They have not (Rec., p. 88).

These goods are woven on the loom and made complete in one process.

Vom Baur, Rec., 188.
Horrax, Rec., 150.

They cannot be embroidered because "embroidery is always work added to the completed fabric by means of a needle."

Standard Dictionary.

As found by the Circuit Court of Appeals these articles "are primarily articles of utility, not inappropriately designated in the brief of the importers as 'notions'". It is true that they are more fancy than a plain binding, but that does not change their primary utilitarian character. There are fancy tapes, fancy bindings, fancy beltings and other fancy articles named in the "notion" paragraph 320, as well as the plain varieties, but the principal or primary use of each is that of utility as opposed to ornamentation.

Treasury decisions 6710, 18234, 18951, 24170.
Hyman, Rec., 144.
Horrax, Rec., 150.

The soundness of the doctrine that a provision which is absolute and exclusive in its phraseology is of a superior governing force to one qualified by the phrase "not elsewhere specifically provided for" has been repeatedly recognized by this Court.

Barber vs. Schell, 107 U. S., 617, 520.
Hartranft vs. Meyer, 135 U. S., 237.
Arthur's Ex'rs. vs. Vietor, 127 U. S., 572.

The argument of the government on page 22 of its brief that the words of limitation "not elsewhere specially provided for" should be applied only to some of the articles named in paragraph 339 is answered by reference to the statute itself which reads: "all of the foregoing, composed," etc., and by the case of *Arthur vs. Butterfield*, 125 U. S., 70, 76.

The transfer of the word "braids" to the trimmings paragraph was concurrent with the insertion of the word "bindings" in the law.

We print herewith, as an appendix to this brief, the unanimous opinion of the Circuit Court of Appeals, which is so clear and convincing that this case needs no further argument.

It is respectfully submitted that the judgment of the court below should be affirmed.

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Attorneys for Respondent.

October, 1911.

Appendix.

Act of 1890.	Act of 1894.	Act of 1897.
354. Cotton cords, braids, boot, shoe and corset lacings, thirty-five cents per pound; cotton gimps, galloons, webbing, goring, suspenders and braces, and of the foregoing which are elastic or non-elastic, forty per centum ad valorem: Provided that none of the articles included in this paragraph shall pay a less rate of duty than forty per centum ad valorem.	263. Cords, braids, boot, shoe and corset lacings, tapes, gimps, galloons, webbing goring, suspenders and braces, woven, braided or twisted lamp or candle wicking, lining for bicycle tires, spindle binding, any of the above made of cotton or other vegetable fiber and whether composed in part of India rubber or otherwise, forty-five per centum ad valorem.	320. Bandings, beltings, bindings, bone casings, cords, garters, lining for bicycle tires, ribbons, suspenders and braces, tapes, tubing and webs or webbing, any of the foregoing articles made of cotton or other vegetable fiber, whether composed of in part of india-rubber or otherwise, and not embroidered by hand or machinery, forty-five per centum ad valorem; spindle banding, woven, braided or twisted lamp, stove or candle wicking made of cotton or other vegetable fiber, ten cents per pound and fifteen per centum ad valorem; loom harness or healds made of cotton or other vegetable fiber, or of which cotton or other vegetable fiber is the component material of chief value, fifty cents per pound and twenty-five per centum ad valorem; boot, shoe, and corset lacing made of cotton or other vegetable fiber, twenty-five cents per pound and fifteen per centum ad valorem; labels, for garments or other articles composed of cotton or other vegetable fiber, fifty cents per pound and thirty per centum ad valorem.
373. Laces, edgings, embroideries, insertings, neck rufflings, ruchings, trimmings, tuckings, lace window curtains, and other similar tamboured articles, and articles embroidered by hand or machinery embroidered and hemstitched handkerchiefs, and article made wholly or in part of	276. Laces, edgings, nettings and veilings, embroideries, insertings, neck rufflings, ruchings, trimmings, tuckings, lace window curtains, tamboured articles, and articles embroidered by hand or machinery, embroidered handkerchiefs, and articles made wholly or in part of lace, ruf-	339. Laces, lace window curtains, tidies, pillow shams, bed sets, insertings, flouncings and other lace articles; handkerchiefs, napkins, wearing apparel, and other articles, made wholly or in part of lace, or in imitation of lace; nets or nettings, veils and veilings, etamines, vitrages, neck

lace, rufflings, tuckings, or ruching, all of the above-named articles, composed of flax, jute, cotton or other vegetabel fiber or of which these substances or either of them or a mixture of any of them is the component material of chief value, not specially provided for in this act, sixty per centum ad valorem: Provided, that articles of wearing apparel, and textile fabrics, when embroidered by hand or machinery, and whether specially or otherwise provided for in this act, shall not pay a less rate of duty than that fixed by the respective paragraphs and schedules of this act upon embroideries of the materials of which they are respectively composed.	flings, tuckings, or ruchings, all of the above-named articles, composed of flax, jute, cotton, or other vegetable fiber, or of which these substances or either of them, or a mixture of any of them, is the component material of chief value, not specially provided for in this act, fifty per centum ad valorem.	rufflings, ruchings, tuckings, flutings, and quiltings; embroideries and all trimmings, including braids, edgings, insertings, flouncings, galloons, gorings and bands; wearing apparel, handkerchiefs, and other articles or fabrics embroidered in any manner by hand or machinery, whether with a letter monogram or otherwise; tamboured or appliqued articles, fabrics or wearing apparel; hemstitched or tucked flouncings or skirtings, and articles made wholly or in part of rufflings, tuckings or ruchings, all of the foregoing, composed wholly or in chief value of flax, cotton, or other vegetable fiber and not elsewhere specially provided for in this act, whether composed in part of india-rubber or otherwise, sixty per centum ad valorem: Provided that no wearing apparel or other article or textile fabric, when embroidered by hand or machinery, shall pay duty at a less rate than that imposed in any schedule of this act upon any embroideries of the materials of which embroidery is composed.

Bindings appeared for the first time in the act of 1897, when they were inserted in paragraph 320. Braids at the same time were inserted in paragraph 339. In the provisions of the act of 1890 and 1894 the word "braid" appeared without words of limitation. In paragraph 339 it is followed by the restriction "not elsewhere specially provided for in this act." The articles in the paragraphs at the head of the parallel column (paragraph 354 of the act of 1890; paragraph 263 of the act of 1894, and paragraph 320

of the act of 1897) are primarily articles of utility, not inappropriately designated in the brief of the importer as "notions." The other paragraphs embrace articles which are primarily for the purpose of ornamentation.

Before LACOMBE, WARD and NOYES, Circuit Judges.

NOYES, Circuit Judge (after stating the facts as above). The merchandise in question consists of narrow woven strips bearing "featherstitch" or "herringbone" ornamentation. Their practical use is to cover seams. They are inexpensive, and are largely used in making infants' clothing and underwear. The featherstitch ornamentation improves the appearance of the garment, and is added for that purpose. But the primary purpose of the article is one of utility.

This article has borne various names, such as "seam binding," "featherstitch binding," "featherstitch tape," etc.; but the name by which it has usually been called is "featherstitch braid." Indeed, while the article is not braided, but woven, we should have little difficulty in adopting the conclusion of the Circuit Court and of the Board of Appraisers that prior to 1897 it was generally commercially designated as "featherstitch braid." But this is not a case in which the finding of a commercial designation carries us far. The question is, not whether the articles are braids, but whether they are braids not elsewhere specially provided for in the act. Manifestly commercial designation can have no bearing upon the latter inquiry. It cannot be said that the phrase "braids not otherwise specially provided for"

had any commercial meaning—different from the common understanding—including this merchandise. The articles may be called "featherstitch braids"; but, if some braids are bindings, it is not inconsistent with the commercial designation to assess them under the binding paragraph.

Had this question arisen under the tariff acts of 1890 or 1894, the situation would be entirely different. As we have seen, the word "braid" was used in those acts without words of limitation or qualification. If in a case under either of those acts it had been shown that an article was commercially known as a "braid," it would have necessarily brought it within the statute. But an article is not necessarily brought within paragraph 339 by showing that it is a braid. It may be a braid without question—may have been made upon a braiding machine; but if it is more specially provided for elsewhere, it is not included. Accepting the commercial designation of these articles as featherstitch braids, we only reach the conclusion that they should be classified under paragraph 339 if they are not more specifically provided for elsewhere.

Now, the following definition of the word "binding" appears in the Standard Dictionary:

> "A braid or strip folded and sewed on the edge of any fabric, or sewed over the place where two parts are joined, so as to protect and secure the parts covered by it."

It thus appears that a binding may be a braid used or adapted to be used for a particular useful purpose.

Many kinds of braid are not adapted to this use. They are employed for ornamental purposes solely. Braids of this character should be classified under paragraph 339. And, as we have seen, this classification would be especially appropriate, as that paragraph and those corresponding to it in the earlier acts have always applied particularly to articles of ornamentation. But these featherstitch braids, being used for the purpose of binding seams, are in our opinion, the kind of braids properly called bindings. And we think that it may fairly be assumed that, when Congress inserted the word "bindings" in the "notions" paragraph and transferred the word "braid" to the "trimmings" paragraph with words of qualification, it intended to embrace in the latter paragraph only such braids as were not bindings. If the articles are bindings, as well as braids, the provision in the "notions" paragraph is the more specific. Bindings are embraced without the words of restriction or qualification. These articles as bindings are necessarily included, and they are specially provided for elsewhere than in paragraph 339.

This discussion of the case upon principle leads us to the conclusion that the merchandise should have been assessed for duty as bindings under paragraph 320; and we reach no different result from an examination of other cases, although the question of the classification of this merchandise has been before the courts several times and conflicting decisions have been rendered. In the case of *In re* Dieckerhoff (C. C.), 54 Fed., 161, it was held that these articles

were dutiable as cotton braids under the section of the act of 1890 first quoted, and not as cotton trimmings under the second section quoted. This decision, however, has no special bearing upon the question now under consideration because, as we have seen, bindings were not provided for in the act of 1890. Featherstitch braids may well not be trimmings within the ornamental article paragraph of the earlier act and yet be bindings within the useful article paragraph of the act of 1896.

The government, however, insists that in view of the Dieckerhoff decision it must be presumed that, when Congress used the word "braids" in the act of 1897, it intended that it should apply to featherstitch braids. As just pointed out, however, all that that case held was that the article were braids and not trimmings. It did not hold that they were not bindings. And Congress used the word "braid" only with words of qualification. We see no force in the contention. Aside from the Dieckerhoff decision under the act of 1890 the question here presented has been decided both ways by the Circuit Court. In Steinhart vs. United States (C. C.), 121 Fed., 442, it was held that the articles, if braids, were bindings also, and therefore dutiable under paragraph 320. This decision was followed in The Hague Case which does not appear in the "Federal Reporter." In the case of Von Baur vs. United States (C. C.), 141 Fed., 439, the question was again presented and decided the other way. The opinion of the board holding

that the articles were braids under paragraph 339 was affirmed without opinion by the Circuit Court. We find the reasoning in the Steinhart decision persuasive, and, for reasons already stated, fail to find that the additional evidence requires any different conclusion.

The decision of the Circuit Court is reversed.

172 Fed. Rep., 342.

UNITED STATES *v.* BARUCH.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

No. 190. Argued November 13, 14, 1911.—Decided February 19, 1912.

Cotton featherstitch braids are properly assessed at sixty per centum as braids under the trimming schedule, par. 339, and not at forty-five per centum as tapes or bindings under notions schedule, par. 320 of the Tariff Act of July 24, 1897.

Where a conflict which had existed under prior tariff acts as to the classification of articles had been settled, Congress will not be presumed in enacting a new tariff to renew the conflict by not adhering to the commercial and tariff meaning of the terms as it had been settled.

The soundness of the judicial construction of a statute is reinforced by the fact that it had been the construction given by the Executive Department charged with its enforcement ever since its adoption.

172 Fed. Rep. 342, reversed; 159 Fed. Rep. 294, affirmed.

THE facts, which involve the classification of cotton-featherstitch braids under the tariff act of 1897, are stated in the opinion.

Mr. Assistant Attorney General Wemple, with whom *Mr. Charles E. McNabb, Assistant Attorney* was on the brief, for the United States.

Mr. Wade H. Ellis, with whom *Mr. John A. Kratz, Jr.*, was on the brief, for respondents.

MR. CHIEF JUSTICE WHITE delivered the opinion of the court.

This case concerns the proper classification of merchandise imported in 1899, and subsequent years, by the

respondent at the port of New York, invoiced as "cotton-featherstitch braids." The goods consisted of articles ranging variously from about one-fourth to one-half of an inch in width, loom woven, of white or colored threads throughout, or of mixed white and variously colored threads of cotton or other vegetable fiber, and ornamented with raised figures in various designs, some of which had plain and others scalloped or looped edges. They were officially appraised as "cotton braids—sixty percentum;" and were accordingly classified by the collector as "braids" under paragraph 339 of the tariff act of July 24, 1897 (30 Stat. 151, 181, c. 11), generally referred to as the "trimmings" schedule, the pertinent provision of which is as follows: "Embroideries and all trimmings, including braids, edgings, insertings, flouncings, galloons, gorings and bands, . . . composed wholly or in chief value of flax, cotton, or other vegetable fiber, and not elsewhere specially provided for in this Act."

Asserting that the articles should not have been assessed at 60 per cent. but were dutiable at the rate of 45 per cent. ad valorem under paragraph 320 of said act, usually styled the "notions" schedule, as "bindings" or as "tapes . . . made of cotton or other vegetable fiber," the importers duly protested, and the question of the proper classification was considered by the Board of General Appraisers. That body, on July 24, 1906, sustained the decision of the collector, upon the authority of a ruling made in the case of Straus Bros. & Co., wherein the Board but acted upon the evidence taken in and applied the ruling made in what is known as the *Vom Baur Case*. The importers carried the case to the Circuit Court, and in that court additional evidence was introduced by both parties. Upon such additional evidence and the evidence taken before the board, the decision of the board was affirmed on November 23, 1907. 159 Fed. Rep. 294. On appeal, however, the Circuit Court of Ap-

peals held the merchandise dutiable at 45 per cent. ad valorem as "binding," under § 320, and the decision of the Circuit Court was reversed. 172 Fed. Rep. 342. This writ of certiorari was then allowed.

Under the tariff acts of 1890 (May 9, 1890, 26 Stat. 105, c. 200) and 1894 (August 27, 1894, 28 Stat. 509, c. 349) braids were enumerated in the "notions" schedule, which carried a lower rate of duty than articles in the "trimmings" schedule.

In re Dieckerhoff, 54 Fed. Rep. 161, involved a review of the decision of the Board of General Appraisers (G. A. 1301) in the matter of an importation, in 1891, of articles similar to those here in question, dutiable under the tariff act of 1890. The controversy was whether the goods should have been assessed at the rate of 60 per cent. ad valorem as cotton trimmings under the "trimmings" schedule, paragraph 373 of the tariff act of 1890, or assessed as cotton braids at 35 cents per pound under the "notions" schedule of the same act. The Government insisting on the higher duty, contended that the articles should be classified as cotton trimmings, and were not braids, because to be such they must be braided. The importers, however, contending for the lower duty, urged that the goods were commonly known as featherstitch braids, and should be classified as braids, and thus be brought under the notion schedule bearing the lower duty. The court overruled the contention of the Government, accepted the commercial designation, and sustained the ruling of the Board of General Appraisers that the goods were braids, and dutiable as such. The Government acquiesced in this decision. The administrative rule, therefore, under the tariff act of 1890, was to classify the articles in question as braids embraced within the notions schedule, and thereby cause them to carry a lower duty than they would have carried had they been embraced in the trimmings schedule; and under the act of 1894 the

same practice was pursued. When, by the act of 1897, upon which this case depends, braids were taken out of the notions schedule carrying a lower duty and put in the trimmings schedule which carried the higher, the articles continued to be classed as braids, and consequently, because of the change in the law, were assessed for a higher duty. And this administrative construction was applied under the act of 1897 for a considerable number of years. See G. A. 4326 (T. D. 20,515), decided January 3, 1899, and G. A. 4929 (T. D. 23,073), decided May 27, 1901.

When the latter decision was rendered (May 27, 1901), however, the importer appealed from the ruling, and the Circuit Court for the Southern District of New York, in *Steinhardt* v. *United States*, 121 Fed. Rep. 442, reversed the decision of the Board of General Appraisers and held that the articles were dutiable as bindings under the notions schedule and not as braids under the trimmings schedule. The reasoning was this—the court said (p. 443): "The articles in question appear to be narrow woven tapes of cotton used largely for covering the seams of underwear and waists. The Standard Dictionary gives one definition of a 'braid' as 'a narrow, flat tape or woven strip for binding the edges of fabrics, or for ornamenting them.' If these articles are braids within this or a like definition, they are also bindings or tapes within paragraph 320 . . ." Thus finding the articles to be within the dictionary definition of both braids and bindings, as the trimmings schedule in which braids were embraced, paragraph 339, contained a general qualification that articles therein named should be liable to the duty therein specified when "not elsewhere specially provided for in this act," the court held that as the braids in question were within the dictionary definition of bindings they were therefore otherwise provided for and should be classed within the notion schedule, paragraph 320, and carry the lower duty. The Government did not appeal from this decision, under the

instructions of the Attorney General. Such instructions, however, expressly directed that in all future importations the decision should not be applied, but that duty should be assessed according to the prior practice so that a test case might be made. (T. D. 24,269.) It is persuasively indicated by what we shall hereafter state, that this course was followed, because the record in the *Steinhardt Case* did not contain what was deemed to be adequate proof as to the accepted commercial designation of the articles to afford a proper basis for testing the matter in that case, a deficiency which it may well be surmised arose from the belief on the part of the Government in making up that case that the settled administrative practice based upon the previous judicial construction would not be departed from.

The classification again came under consideration in what is known as the *Vom Baur Case*, and much testimony was taken before the board "for the purpose of showing that the articles were commercially known as braids, and were so commercially known at and prior to the passage of the tariff act of 1897, and therefore dutiable under paragraph 339." In an exhaustive review of the evidence in that case the board held that the testimony established that there had been no change in the commercial designation of the articles since 1892, at which time, as heretofore stated, the goods were commercially known as "feather-stitch braids," and such had been judicially determined to be the case by the Circuit Court in the *Dieckerhoff Case*, *supra*. The board pointed out that in the case before it the importers had taken a position the opposite to that which had been assumed by the importers in the *Dieckerhoff Case*, since in that case, for the purpose of obtaining the lower duty under the act of 1890, they had insisted that the articles were commercially known as braids, and were dutiable as such; and in the case under consideration the contention was that there was no general and definite

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trade designation of the articles as braids, since they were known as bindings and tapes, as well as by the name of featherstitch braids, and that they were in fact tapes, having been produced by weaving instead of by braiding.

The following questions were considered by the board in connection with an extended review of the testimony:

"First. Were these goods known in the trade and commerce of this country at and immediately prior to July 24, 1897, as 'braids'?

"Second. If the goods were commercially known as 'braids' at and immediately prior to July 24, 1897, are they dutiable under paragraph 339?"

On the record before it it was found "as matter of fact":

1. That the goods in question were generally known in the wholesale trade of the United States at and prior to July 24, 1897, as "featherstitch braids."

2. That the term "featherstitch braids" was the only general commercial name under which the goods were known in the trade and commerce of this country at and immediately prior to July 24, 1897, and that the terms "seam bindings," "finishing tapes," and others are subordinate names which have not been generally employed to designate these goods.

The board concluded its opinion as follows:

"In view of these findings, we think the case is distinguished from the *Steinhardt Case* (*supra*). That case only decided that if the articles were braids within the lexicographical definitions they were also bindings or tapes, and were therefore, more specifically provided for in paragraph 320. There was no satisfactory testimony in the case as to the commercial designation of the articles, whereas it has now been shown by competent testimony that they are generally known in the commerce of this country as 'braids,' and not as 'tapes' or 'bindings.' The Circuit Court of Appeals in *Hiller* v. *United States* (106 Fed. Rep. 73), decided that cotton braids of all

classes are included within the scope of paragraph 339. The decision of the court is in part as follows: 'A comparison of the provisions of the cotton schedules in the acts of 1894 and 1897 in regard to the classification of braids is, however, quite significant of the intent of Congress. Paragraph 263 of the act of 1894, which corresponds to paragraph 320 of the act of 1897, imposed a duty of 45 per cent. upon cords, braids, etc., made of cotton, but braids are omitted in paragraph 320 of the new act, which imposes the same duty. Paragraph 276 of the act of 1894, which corresponded to paragraph 329 of the new act, omitted braids, which was inserted in paragraph 339—the one under consideration. A comparison of the two acts indicates that Congress intentionally took braids out of the 45 per cent. paragraph, where it had been in 1894, and put the article into a paragraph imposing the higher rate of duty, and that it intended to impose the rate upon the articles, irrespective of the use to which they might be applied.'

"Under this decision, featherstitch braids, which were held in the *Dieckerhoff Case* to be dutiable as 'braids' under the act of 1890, and which we have found were commercially known as 'braids' at the time of the passage of the act of July 24, 1897, are, in our opinion, dutiable as assessed under the provisions of paragraph 339 of the act of July 24, 1897."

On the appeal of the importers, the decision was affirmed, "on the opinion of the Board," which is set out *verbatim* in the report of the case. *Vom Baur* v. *United States*, 141 Fed. Rep. 439. An appeal was taken from the decision, but it was subsequently dismissed without prejudice.

As already stated, the Board of General Appraisers, in the case at bar, rested their decision upon the evidence taken and its ruling in the *Vom Baur Case*. As also stated, that evidence was supplemented in the Circuit

Court by evidence taken on behalf of both parties to the controversy. Such further testimony, it was observed by the Circuit Court, did not tend to weaken the conclusion reached by the board, "that these goods were known generally in the trade as featherstitch braids prior to 1897," but "in truth it serves to strengthen it."

In the opinion of the Circuit Court of Appeals, reversing the decision of the Circuit Court, the court referred to the "merchandise in question" as consisting "of narrow woven strips bearing 'featherstitch' or 'herringbone' ornamentation," and substantially conceded that the Circuit Court and Board of Appraisers correctly decided "that prior to 1897 it was generally commercially designated as 'featherstitch braid.'" Accepting this commercial designation, however, and evidently relying upon the reasoning of the opinion in the *Steinhardt Case*, it was in effect held that the braids in question were not used "for ornamental purposes solely," but "being used for the purpose of binding seams are, in our opinion, the kind of braids properly called bindings." Referring to § 320 of the act of 1897 as the "notions" paragraph, and § 339 as the "trimmings" paragraph, the court then said:

"And we think that it may fairly be assumed that when Congress inserted the word 'bindings' in the 'notions' paragraph and transferred the word 'braid' to the 'trimmings' paragraph with words of qualification, it intended to embrace in the latter paragraph only such braids as were not bindings.

"If the articles are bindings as well as braids, the provision in the 'notions' paragraph is the more specific. Bindings are embraced without words of restriction or qualification. These articles as bindings are necessarily included and they are specially provided for elsewhere in paragraph 339."

There is no substantial dispute as to the correctness of the findings of the Board of General Appraisers that

the goods in question were generally known in the wholesale trade of the United States at and prior to July 24, 1897, as "featherstitch braids," and at such period that designation "was the only general commercial name under which the goods were known in the trade and commerce of this country." That the tariff act of 1897 was drafted and was adopted by Congress in the light of the then fixed practice of the Government to assess such articles as "braids," irrespective of the subsidiary names which may have been applied by some who used the articles or without regard to some of the special uses of which they were susceptible of being put is not open to reasonable contention. This being the case, we are unable to conclude that Congress, knowing the commercial as well as the tariff designation of the articles, reëmployed the term braids in the act of 1897, and yet intended that some of the articles embraced within the commercial designation should be taken out of that designation and treated for the purpose of assessment of duty as being that which they were not, because they possessed features of utility as well as ornamentation.

When the contentions which had arisen concerning the dutiable character of the articles under the act of 1890 are taken into view and the claims there made by the importers as to their nature and character for the purpose of subjecting them to a lower duty are borne in mind, we think the shifting of braids from the lower duty of the notions schedule to the higher duty of the trimmings schedule, without any change of phraseology to indicate that it was the purpose to depart from the settled commercial meaning of the word braids, plainly manifested the purpose of Congress to accept that designation and make it applicable, and hence to subject the articles, under their accepted designation, to the higher duty placed upon the articles embraced in the schedule to which braids were transferred. Any other view would render

necessary the conclusion that it was the intention of Congress in using the word braids not to adhere to the then well-settled commercial and tariff meaning of the term, but to use the word in a sense different from that which was accepted for the purpose of renewing a conflict as to the proper meaning of the word, which had been flagrant under the prior act. While these conclusions need no reinforcement, their soundness is additionally and cogently sustained by the construction given to the act upon its adoption and the consequent administrative enforcement of the same which prevailed without question for so considerable a time.

The decree of the Circuit Court of Appeals is reversed, and that of the Circuit Court is affirmed; and the case is remanded to the District Court of the United States for the Southern District of New York.